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THE ANTHRACITE COAL STRIKE AND ITS SETTLEMENT.

THE strike of the anthracite coal miners during 1902 was a phenomenon of commanding importance in consequence of the unparalleled shortage of fuel which ensued. Nevertheless, the strike finds its chief significance in the principles that were at stake. The rights of labor unions, the rights of non-unionists, the rights of the general public as affected by labor disputes, have become among the most burning of social questions. Since 1890 trade unions have grown in membership by leaps and bounds, and with their increasing power they have forced employers, and the people generally, to accord to their policies and practices a degree of attention hitherto unknown. The dispute in the anthracite field brought many of these new issues home to the people with definiteness and with tremendous force. The decision of the Anthracite Coal Strike Commission is therefore important, not so much because of its immediate effect on wages or profits, as because it presents the opinions of representative American citizens regarding these wide-reaching questions of principle.

I.

For more than twenty-five years prior to 1899 there had been no labor organization among anthracite coal miners of sufficient strength to influence materially the conditions of labor. In that year the United Mine Workers of America, an organization which had become since 1897 a dominant factor in the bituminous

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mines, sent organizers to the anthracite region and soon enrolled half the miners there. The strength of the union grew so rapidly that, in September, 1900, it ventured upon a general strike. Almost the entire body of anthracite workers quit work. The mine operators, influenced in part by pressure from campaign leaders of the Republican party, yielded to most of the demands of the miners, and work was resumed after about six weeks. Wages were advanced ten per cent.[1] The sliding scale, by which the wages in the Middle and Southern fields had varied according to the price of coal, was abandoned, the miners objecting that it had always reduced, never advanced, their pay. The demand for recognition of the union and for a system of joint conferences and agreements was refused by the operators. The miners, however, appear to have understood the operators to agree informally that, if peace were maintained till April, 1901, a conference would then be held with the representatives of the union.

In the spring of 1901 the United Mine Workers requested the employers to meet them in such a conference, and to adopt an agreement covering the conditions of labor for the ensuing year, after the fashion prevailing in the bituminous region. This request was denied. The operators, however, posted notices that the existing terms of employment would continue another year. For the time a strike was narrowly averted; but the fundamental aim to secure recognition of the union was not forgotten, and in February, 1902, the demand for a conference was renewed. The presidents of the leading anthracite railroads and railroad coal companies, evidently after joint consultation, replied separately that they were always ready to meet their own employees, individually or by representatives, but that they would have no dealings with a general labor organization, still less with one representing bituminous miners as well as those of the anthracite region.

In March a convention of the anthracite districts of the United Mine Workers formulated demands for an advance of twenty

[1] The price of powder, which in most of the mines had been $2.75 per keg, was reduced to $1.50. This meant an increase of six or seven per cent in the wages of contract miners, but it was computed as part of the 10 per cent advance, not in addition to it.

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per cent in the wages of piece-workers, for a reduction of hours from ten to eight per day for time-workers, for the weighing of coal wherever the basis of wage payment was the quantity mined, and for recognition of the union. The National Civic Federation, through its chairman, Senator Hanna, succeeded in bringing the presidents of the anthracite roads into conference with Mr. Mitchell and other representatives of the miners, but the employers persistently refused to deal with the United Mine Workers in any formal way. On May 8 the union proposed that its demands be submitted to the arbitration of a committee of five to be chosen by the Civic Federation, or, if preferred, to Archbishop Ireland, Bishop Potter, and another person to be selected by these two. This request was also rejected. On May 12 a preliminary strike was ordered, and three days later a delegate convention of the anthracite districts of the union, by a vote of 461¼ to 349¾, decided to continue the strike. Though the vote was far from unanimous, loyalty to the union was so strong that at most only a few thousand of the 147,000 employees in and about the mines sought to continue at work. Early in June the strike was extended to the engineers, firemen and pumpmen. Most of the operators succeeded in getting enough men to run the engines and pumps so as to prevent the flooding of the mines, but during the five months of the strike they were able to bring very few new men to take the place of the other mine workers, and failed to persuade any considerable number of the strikers to return to work. This fact, so far as can be judged from the newspaper accounts and the evidence before the strike commission, was by no means primarily due to violence on the part of the strikers, or to fear of violence, though unfortunately instances of lawlessness were far too common. Aided by large contributions from the bituminous miners, from labor organizations in other crafts throughout the country, and even from people of the middle class, the United Mine Workers were able to support such strikers as were in need. Indeed the organization came out of the long struggle with over a million dollars in its treasury, far more than it had at the outset.

Anthracite production was almost entirely suspended. The people, with the prospect of an unprecedented coal famine the

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ensuing winter, became daily more incensed — some with the miners, more with the operators, many with both sides. Repeated attempts to bring about a settlement, or to persuade the mine owners to submit to arbitration, proved vain. At last President Roosevelt intervened, not by virtue of any constitutional authority, but as the representative citizen of the country. His first appeal to the presidents of the coal roads to resort to arbitration was unsuccessful. Soon after, however, they proposed that the questions at issue be submitted to a board of five members, — an officer of the army or navy, an expert mining engineer, a judge of the United States circuit court from Pennsylvania, a sociologist, and a man familiar by actual participation with the coal business. The miners very naturally refused to accept a body on which a representative of the anthracite industry should be seated without a representative of organized labor. After a long personal conference between President Roosevelt, the railroad presidents, and Mr. Mitchell, a modification of the proposed board of arbitration was agreed upon. The President accordingly appointed, in consultation with the parties, Brigadier-General John M. Wilson, Mr. Edward W. Parker of the Geological Survey, Judge George Gray, Mr. E. E. Clark, chief of the Order of Railroad Conductors, Mr. Thomas H. Watkins, a retired coal operator, and Bishop John L. Spalding. Hon. Carroll D. Wright, Commissioner of Labor, was chosen recorder to the commission, but soon after, by general consent, he was made one of its members. Judge Gray was selected as chairman. The railroad presidents, on the one hand, and a convention of the anthracite districts of the union, on the other, agreed to be bound by the award of this board, and the strike was declared off on October 23. Later most of the smaller independent coal operators became parties to the proceedings, promising to abide by the award rendered. A considerable number of non-union miners also presented a petition that they be considered a third party to the case. They submitted demands essentially the same as those of the union miners, but with the added demand that there should be no discrimination in favor of the organization, and that its members be required to desist from interference with non-unionists. It appeared during the proceedings that the attorneys of

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this non-union contingent were paid by the operators. Apparently, in fact, this intervention of the non-unionists was initiated by the employers.

The arbitration commission began its work with a week of personal investigation of the mines and their surroundings. Its later proceedings were much in the fashion of a court trial, though somewhat more informal. Both sides were represented by counsel, who examined and cross-examined the 558 witnesses. Much the larger part of the oral testimony was of very little value, often bearing but slightly on the real questions at issue. The work of the commission dragged on slowly, and in November it was interrupted in the hope that a voluntary agreement would be reached by the parties. This plan failed and the investigation continued. The award was finally announced in March, 1903. It is to continue in force till March 31, 1906, while the provisions regarding wages were made retroactive for the time after November 1, 1902.

II.

At the request of the strike commission, the demands of the union miners were formulated categorically at the beginning of the inquiry. The first two of the four had virtually the same purpose, — an increase of wages. The demand for an increase of twenty per cent in the wages of piece-workers included "contract miners" and, indirectly, the "mine laborers" whom they hire to load coal. These two classes constitute about two-fifths of the employees in and about the mines. For all other classes of employees, who are paid by the hour, day or week, the demand was for a reduction of the hours of labor from ten to eight, without a reduction in earnings. This would be equivalent to an advance of twenty-five per cent in hourly wages. The arguments put forward under this second head in the formal statement of the miners were those ordinarily used in favor of the shorter working-day, — arguments relating to health, safety, efficiency, and the like. The operators replied by pointing out that, even on days when the mines are active, most of the time-workers are seldom employed more than eight or nine hours. The real significance of

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the demand, as is more fully shown below, was the desire for an advance in pay.

The strike commission compromised in regard to these two demands. It advanced piece rates ten per cent, and reduced the nominal hours of time-workers from ten to nine per day, equivalent to an advance of $11\frac{1}{9}$ per cent in wages.

Was this increase sufficient? Was it excessive? The reasoning of the commission itself on this point is scarcely conclusive. The precision with which the difference was split was apparently due rather to the hope that the aggregate dissatisfaction would thus be as little as possible, than to the conviction that the rates fixed were essentially just to both sides. In truth, the position of an arbitrator of wages is a hard one under any circumstances. There is no standard wage even for a known grade of skill; and degrees of skill cannot be compared when tasks differ utterly in their nature. The lack of accurate wage statistics renders comparisons with other occupations wellnigh impossible. Moreover, the conditions as regards earnings in the anthracite mines are peculiarly complicated. It is impossible to learn accurately the average earnings, year in and year out. The strike commission could say no more than that there had been "failure to produce testimony to sustain" the proposition that the wages of contract miners are less than those for work of similar grade in the bituminous field or in other occupations; and its views as to the wages of other classes of mine workers are no more definite.

The chief specific argument which the commission brings forward to justify the increase in wages is that the cost of living was approximately ten per cent higher in the anthracite region in 1902 than in 1900, and six per cent higher than in 1901. Special agents of the Department of Labor secured retail prices from fifty-eight establishments in the region. Weighting the statistics according to the average quantities consumed by the workingman's family, it was found that, if prices for 1901 be taken as 100, the index number for the prices of 1898 would be 96.5; 1899, 94.5; 1900, 96.7; 1901, 100; 1902, 106.2. If these higher costs of living continue, the position of the mine workers, so far as real wages are concerned, will be little better under the award than they were in 1901.

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The commission presents many valuable statistics of the wages of anthracite workers — the first that can claim any considerable degree of accuracy. The leading operators, in the first instance, had submitted elaborate tables of wages and earnings. Some of these tended to show that the contract miner was a perfect prince among wage-earners, and that even men paid by the day were highly remunerated. Critical examination of these tables, however, revealed in some of them errors of the most pronounced character, — errors perhaps to some extent due to intent to deceive, but probably more often to the fact that the employers, as some of them finally confessed, had been largely ignorant of the actual earnings of their men, especially of the contract miners. Extreme instances of richly paid miners were found to be explained by the practice of letting a contract in the name of one individual, who associated with himself not merely the customary single laborer, but one or more other skilled miners besides laborers. The commission accordingly adopted the policy of requiring detailed pay-rolls to be submitted to the criticism of its own skilled statisticians, as well as to the miners and their counsel. The tables finally prepared in this manner may therefore be considered fairly trustworthy, as far as they go.

They are, however, far from satisfactory. We are at once confronted by the great difficulty, everywhere experienced, of ascertaining annual earnings, as distinguished from mere daily rates of pay. Especially in the anthracite industry is it essential that the former as well as the latter should be known, for in no other great industry is the opportunity to work so irregular. To ascertain from the books of employers average annual earnings for all the men is impossible, because the receipts of the individual can be traced only so long as he remains in the employ of a single establishment. The most accurate statistics of the earnings of contract miners are those of the Lehigh Valley, Lehigh and Wilkesbarre, Philadelphia and Reading, and Scranton Coal Companies, which pay directly to the miner's laborer the amount due him, and record separately the net earnings of the miner himself. The first two of these companies presented tables showing only the earnings of those men whose names appeared on the books during every month of 1901, and who presumably earned nothing

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from other sources. But what about those who were not on the rolls every month? The report of the Philadelphia and Reading Coal and Iron Company, for nine selected collieries, shows that out of 1,843 contract miners no less than 901 received during 1901, from the collieries named, less than $200 each. The average number of days worked by these 901 men was only 28. Evidently, to average their earnings with those of miners working 250 days during the year would give an unfairly low figure. It is probable that a large proportion of them merely shifted to other collieries. Yet it is entirely possible that some of these part-time men, as well as some of the part-time men not reported by the Lehigh Valley and Lehigh and Wilkesbarre companies, were in enforced idleness during a greater or less proportion of the time when they were not on the rolls of the reporting companies. The difficulty is one familiar to all investigators of wages. Thoroughly satisfactory statistics of annual earnings can be obtained only through detailed information showing how much each individual has earned during the year, wherever he may have been employed; and such information is exceedingly difficult to obtain, involving a vast deal of trouble and expense. Accordingly, it seems doubtful that statistics of this nature can ever be secured for any large number of wage-earners.

Taking the figures for what they are worth, we find that the average earnings for 1901 of all-the-year contract miners of the Lehigh Valley Coal Company were $568. The miners entered the collieries, on an average, 236 out of the 264 days on which the breakers started. The average earnings were thus $2.41 per day worked, but only $1.81 per day of possible working time, counting 313 days to the year. The average annual earnings of the miners who appeared on the books of the Lehigh and Wilkesbarre Coal Company every month of 1901 were $589. The table below shows the number and proportion of the contract miners of the Lehigh Valley and Philadelphia and Reading companies who received the respective annual earnings indicated. The returns of the latter company cover nine collieries, in which the average earnings are stated to exceed those in its entire 37 collieries by about 10 per cent. The 901 miners who earned less than $200 each at the nine collieries have been excluded.

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CLASSIFIED EARNINGS OF CONTRACT MINERS, 1901.

EARNINGS.	LEHIGH VALLEY.			PHILADELPHIA AND READING.		
	NO. OF MINERS.	PER CENT OF TOTAL.	AVG. DAYS WORKED.	NO. OF MINERS.	PER CENT OF TOTAL.	AVG. DAYS WORKED.
$800 or over	53	5.8	256	102	10.8	256
700–800	93	10.1	250	86	9.1	245
600–700	204	22.1	249	130	13.8	231
500–600	295	31.9	238	188	20.0	215
400–500	176	19.1	221	140	14.9	181
300–400	76	8.2	209	136	14.4	143
200–300	16	1.7	185	160	17.0	103
Under 200	10	1.1	159			
	923	100.0		942	100.0	

From this table it will be seen that, while a considerable proportion of the all-the-year contract miners of the Lehigh Valley Coal Company get more than $700 per year, nearly three-fourths of them fall within the limits of $400 to $700, and nearly one-third, the largest single group, show earnings ranging from $500 to $600. The Philadelphia and Reading figures naturally show greater distribution of miners among the various groups of earnings, since many men working only a fraction of the year are included, as is indicated by the column showing the average number of days worked by the miners included under each group.

The strike commission, from its study of these and other similar figures, reaches the opinion that about $560 would represent the average earnings of the contract miners in 1901. This means an average wage of about $1.80 per possible working-day. These earnings seem to compare fairly well with those of workmen in other occupations requiring moderate skill, although anything like accurate comparison is impossible. As is noted below,[1] those who are employed in the anthracite mines incur risks which are considerably greater than those incurred by laborers in other employments. It may be admitted that such risks should be compensated by higher wages. It is difficult,

[1] P. 399.

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however, to establish a general principle which will determine exactly how great an advance in wages would be fair compensation for a given risk.

The contract miner is much better paid than most of the other classes employed about the mines. The laborer whom he hires receives usually about 36 per cent of the gross receipts of the miner. Cost of materials (except powder, which is separately reckoned) and of sharpening tools must be paid by the miner out of these gross earnings. These expenses are estimated by Dr. Peter Roberts at about $2.00 per month.[1] We may assume, therefore, that the laborer's wage is equal to about 60 per cent of the net earnings of the miner. This would mean, on the average, only in the neighborhood of $350 per year for the laborer.

In considering the earnings of the anthracite workers who are paid by time, — approximately three-fifths of the entire number employed,— we perceive at once the significance of the demand for the lessening of the length of the nominal work-day. Most of these men can work only on days when the breaker starts, and only so long as it is in operation. In the anthracite region at large the number of breaker starts in 1901 averaged only 258, or five-sixths of the possible number of work-days, excluding Sundays. But seldom does a breaker run a full ten-hour day. The average time of operation in all the collieries during 1901 was 7.6 hours per day when the breaker started, and the aggregate working-time amounted to only 196 ten-hour days, or about 60 per cent of a full working-year.

The Philadelphia and Reading Company shows much the greatest regularity of employment. Its breakers started on 261 days, and made a total of 221 ten-hour days. On no one day did a breaker at any colliery of this company run ten hours, but on 85 per cent of the starts nine hours or more were made, while for most of the other starts the time worked was from seven to nine hours. The Delaware and Hudson Company, on the other hand, shows 264 breaker starts, but only 183 ten-hour days in the aggregate. In only 22.3 per cent of the starts at its collieries were nine hours or more made, while for 35.8 per cent of them the time of operation was from seven to eight hours, and for 21.6

[1] The Anthracite Coal Industry, 1901, p. 113.

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per cent only from five to six hours. Still worse is the irregularity of some of the other companies, as seen in the following table:

BREAKER STARTS AND HOURS PER START, 1901.

COMPANY.	NO. OF STARTS.	AV. HRS. PER START.	TOTAL 10-HOUR DAYS.	NO. OF STARTS WITH		
				8-10 HRS.	6-7 HRS.	UNDER 6 HRS.
Del., Lack. & West.	262	7.8	205	77.5	13.2	9.3
Lehigh & Wilkesbarre	258	7.7	199	86.8	7.7	5.6
Pennsylvania Coal	232	6.8	159	53.8	22.3	23.9
Scranton Coal	260	6.6	172	38.8	32.8	28.4
Temple Iron	256	8.2	184	42.1	43.4	14.5
Hillside Coal and Iron	253	6.6	167	27.6	44.5	27.9
Lehigh Valley Coal	263	8.1	213			
Philadelphia and Reading	261	8.6	225	86.8	9.7	3.5
Delaware and Hudson	264	6.9	183	26.4	44.0	29.6

Now, wages of time-workers in the coal mines, prior to the strike, were paid for the most part on the basis of ten-hour days. If a man worked four hours in a day, he was paid four-tenths of the daily rate of wages fixed for the occupation. The above figures show that it meant very little to say, for instance, that the average rate of wages of loaders at the Philadelphia and Reading mines was $1.90 per day, when the work was so irregular that the average earnings for the year were only $1.10 per possible working-day of ten hours. If all the available work could be crowded into seven or eight consecutive months, the mine worker might have some chance to supplement his wages by other employment; or if he could know in advance that for a given day or number of days the breaker would not start, he could at least take advantage of the idleness to get a real vacation. But the toiler of the mine must be always ready to work. He never knows in the morning whether the whistle may summon him to his place; and when it does sound, he must go to the mine, don his working-garb, and get to work, even if the breaker is to run only a few hours. His whole day may be spoiled, yet his pay be only for half a day. The wage payment was really on the basis of hours and not of days. The demand for a reduction of hours really meant, therefore, a demand that, for such hours of work

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as were actually available, the rate of pay should be one-eighth of that fixed for the day's wage, instead of only one-tenth.

The average daily wages per ten-hour day worked, for all classes of employees of the Philadelphia and Reading Company, including both men and boys, but excluding contract miners and their laborers, amounted to $1.66 in 1901. These employees worked on the average 242 days, and thus earned $402 each during the year. According to the detailed reports of this and other leading companies, very large numbers of adult men, employed as loaders, drivers, and in several other classes, earned only from $300 to $400 per year. The showing of the Reading is, on the whole, more favorable than that of any other company, and it would be safe to put the average earnings of adult men in the anthracite industry, exclusive of contract miners, engineers, pumpmen, and a few other specially skilled classes, at not over $400.[1]

	No. of Men.	Avg. 10-hr. Days Worked.	Avg. Rate per Day.	Avg. Yearly Earnings.
Headmen, shaft	101	246	$1.60	$393.25
Ditto, second class	25	247	1.43	353.46
Loaders	89	258	1.60	412.63
Ditto, sec. class	27	226	1.46	330.64
Scale runners	28	255	1.56	397.27
Culm dumpers	27	224	1.58	353.95
Shovelers	29	219	1.46	320.32
Laborers, outside	104	261	1.59	414.98
Ditto, second class	101	280	1.42	397.83
Ditto, third class	89	255	1.35	344.06
Slate pickers, first class	368	197	1.10	216.47
Laborers, inside	119	249	1.86	462.34
Ditto, second class	61	236	1.64	386.50
Runners, first class	210	225	1.70	381.87

An increase of one-tenth in such wages as these can surely not be considered excessive, particularly since half or more of the added pay will be consumed by the enhanced cost of living. It must be remembered, too, in judging the earnings both of day-workers and of contract miners, that the last year or two have been exceptionally prosperous in the anthracite industry, and

[1] This opinion is confirmed by the elaborate wage tables of the Delaware and Hudson Company, which, unlike the others, distinguish between the earnings of men and boys. The following are the figures for typical classes of adult workers:

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that work has been more nearly continuous than for several years before.

If earnings were no greater than this in 1901, when the average of ten-hour days worked by the breakers was 196, what must they have been, under a 10 per cent lower scale, in 1897 and 1898, when 149 and 148 days respectively measured the time worked? The increase in the production and price of anthracite has benefited the operators much more than their men. The average price of anthracite, stove size, in New York Harbor, rose from $3.70 in 1899 to $4.32 in 1901[1], or 17 per cent, while the output of the mines increased nearly 12 per cent in the same time, and was more than 25 per cent greater in 1901 than in 1898. It is by no means certain that the present activity in the mines will continue; therefore, it seems proper that a standard of pay should be established which will insure a living wage in times of depression, since at such times advance in wages would be hardly probable.

The strike commission sets forth some of the reasons tending to make employment in the anthracite mines especially irregular. The seasonal nature of the demand for coal, and the difficulty and expense of storing it in anticipation of consumption, are emphasized. The commission might have added that, in the past, competition among the operators, each seeking to extend his market, led to the opening of more collieries than were needed. The same motive existed even when the output of coal was limited by agreement, for the proportions assigned to each operator depended on the capacity of his collieries. The possibility of profit in this over-development of mines, and in discontinuous operation, depended chiefly on the presence of an over-supply of labor such that, if need be, the mine could be worked to its fullest capacity for a short time each year. There is some evidence that, especially during the seventies, the anthracite operators took measures to encourage immigration into the coal region, from our own cities and from the more backward countries of Europe.[2] Steamship companies, seeking to attract steerage passengers, have continued down to the present time, it is said, to advertise the

[1] Bulletin Department of Labor, March, 1902, p. 387.

[2] Powderly, Thirty Years of Labor, p. 428.

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rates of daily wages prevailing in the anthracite field, and have thus led many to come to the mines who were not aware of the irregularity of employment which made the annual earnings much less than they had anticipated. The reports of the first-comers have induced their relatives and friends to follow in their steps; for, after all, the earnings of the anthracite miners have always been materially higher than those prevailing among unskilled laborers in Italy, or Hungary, or Poland. Once settled in the mining region, the immigrant has been tied there by his ignorance of our country, of its language, and of its labor markets, as well as by the bonds of race fellowship. The hope of greater regularity of work in the future, when the daily wage rates should bring in comparatively high yearly earnings, has also doubtless kept many laborers from abandoning the anthracite industry.

With all this, it may perhaps be admitted that the less skilled classes of anthracite workers who have come to us from eastern and southern Europe have earned, especially during the past year or two, quite as much as their fellow-countrymen have earned in the other unskilled occupations which they have been so largely usurping in this country. But the strike commission was forced to face the question whether we can afford to see foreign standards of wages and of life grow up in any of our communities. Thousands of the native-born miners, and of the earlier immigrants of higher type, have been able to rise to the better positions in the anthracite industry, or to seek better conditions elsewhere. But many others, bound by ownership of homes or by the multitude of other ties that check the mobility of labor, have had to suffer a gradual undermining of their standard of living. One of the beneficial effects of the coal strike should be to arouse public sentiment against the flood of low-class immigration that is constantly pouring in upon us. The strike has brought into sharp relief the difference between the conditions of life which the Italian or the Hungarian will endure and those which we have been wont to consider proper for the American. It is to be hoped, too, that the raising of wages by the award of the commission will lessen the incentive of the operators to encourage an over-supply of labor at the mines, and will thus tend to greater continuity of employment. As the commission points out, the

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operators have, during the past few years, begun to introduce methods for equalizing the output of coal throughout the year; and with sufficient stimulus these methods can be greatly extended.

The coal commission suggests the great risk of accident as one reason why the anthracite miner should be paid more than the laborer of similar skill in other industries. It would be difficult to over-emphasize this point. The death rate from accident in and about the mines in 1901 was 3.5 per 1,000 employed, or fully a third of the death rate from all causes for the general adult male population of the country.[1] Even railroad employees, counting all classes together, show an accident death rate considerably lower — in 1900, 2.51 per 1,000 employed. Among those working inside the anthracite mines, the deaths from accident numbered 4.5 per 1,000 in 1901. Besides those killed, every year from 7 to 10 out of every 1,000 anthracite workmen are seriously injured in connection with their work, and a large proportion of this number are permanently disabled. Mine operators are almost never compelled by law to pay damages for the accidental injury or death of their employees, nor do they contribute at all largely to insurance schemes for the aid of the miners in case of accident. It would seem but a moderate grant of justice that the anthracite laborer, likely to be cut off at any moment in the prime of life, should have his wage increased materially above the mere remuneration for his toil. Calculations of the mere money payment that should compensate men for incurring these terrible risks seem heartless.

The commission reëstablished the sliding scale system, although in a decidedly different form from that which caused so much dissatisfaction prior to 1900. It rightly holds that "no sliding scale can be of permanent value, unless there be established a minimum basis of earnings." The standard of living of the laborer must be maintained; wages must be more stable than profits. Accordingly, the wages fixed by the present award became the minimum. If the average price of the domestic and

[1] According to the Census of 1900, in the areas keeping vital statistics, the death rate per 1000 from all causes for men from 15 to 24 years of age was 6.7; for those from 25 to 34, 9.5; from 35 to 44, 12.4. Census of 1900, Vol. III, p. lxxx.

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lump sizes of anthracite advances above $4.50 per ton at tide-water, wages will rise at the rate of one per cent for each five cents per ton; so long as the price is below $4.50 they remain unaffected. This standard base price is more than twenty-five cents higher than the average price of 1901, so that the sliding scale is not likely to affect wages very materially. It is estimated that the sliding scale gives to the miners about two-fifths of the advantage from rising prices whenever the price of $4.50 is exceeded.

This is no place to discuss in detail the complicated question of the sliding scale, or of profit-sharing in general. The sliding scale has merits, if it is not made a fetich. It may enable work-people to share automatically in the advancing prosperity of the country. In the particular case of the anthracite industry, it has the advantage of giving to the miners a share in any excess monopoly gains which the operators by their combination may hereafter extort. But sliding scales ought not to be so arranged as to make the laborers large partakers in profits due to wholly exceptional conditions, or primarily to the skill of the employer; since, on the other hand, they ought not to be required to partake in losses due to causes of the same order. The employer should be the primary bearer of risks. Moreover, changes in price may be far from parallel with changes in profits. Costs of mining, for instance, are probably destined to increase, and might increase faster than prices. From the standpoint of the employees, even where a minimum is provided, the sliding scale has the disadvantage that its existence, with the possibility of some automatic rise of wages in the future, may be pleaded as an excuse for not advancing present wages. All these considerations point to the need of very careful adjustment of the details of a sliding-scale system in the first instance, and of opportunity for readily modifying the basis on which it rests whenever conditions so change as to warrant revision in the interest of either party.

III

The third demand of the strikers was that all coal mined should be paid for by weight, on the basis of a ton of 2,240 pounds, at a

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minimum of 60 cents per ton. The commission found the latter part of the demand altogether unwarranted; the first clause is discussed at some length. At present the wages of contract miners in some collieries are based on the lineal yard excavated; in others, the mine car is the basis. These cars vary greatly in size at the different mines and veins, and the miners complained that the size of the cars had at times been increased without corresponding advance in the rates of pay, and that more "topping" was required by some companies than formerly. In still other instances payment is by the ton, but the miner is required to send up 3,100 pounds or more of coal for a ton. This practice had its origin in the fact that the operators formerly threw away the small sizes of coal, and the gross weight fixed for the miner's ton was calculated to be sufficient only to produce 2,240 pounds of merchantable coal.

The conclusion reached by the commission was that the change proposed would not be of enough advantage to the miners to justify the expense to the operators of weighing coal and establishing weighing machinery, or the confusion which the change would involve. The commissioners were doubtless wise in taking this position. It must be admitted that the existing methods of calculating wages are perplexing to the miners and to the public, obscuring at times changes in the actual rates of pay, and opening the possibility of insidious or deceptive encroachment by the operators. The suspicion, even though unwarranted, which these methods arouse among the miners, is a constant source of friction. On the other hand, the commission recognized that an attempt to change methods which are the outgrowth of long development would involve very complex negotiations, and would perhaps, for a considerable period of time, engender more ill-feeling than now exists. This reform is one that must come about gradually, through general conferences of operators and miners and through local boards of conciliation and arbitration.

The strike commission recommended the introduction of devices for lessening the misunderstandings and abuses that arise out of the present systems of determining the wages due. It adjudged that, whenever a majority of the contract miners in any colliery shall so desire, they must be permitted to provide a check

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weighman, and a check docking-boss to prevent unjust docking on account of impurities in the product sent out by the miner. There have been many complaints of injustice in weighing and docking, and the suspicions of the men were even more a source of trouble than the proved facts. The commission found that in various collieries where check docking-bosses had already been introduced, the number of cars rejected had been lessened about one-half, and the wages of the miners had thus been increased by from one to three per cent. The appointment of check weighmen had also been followed in some instances by a material increase in the amount of coal credited. Though the figures on this point were not published, it is understood that in one or two cases the change in weights was sufficient to arouse a decided suspicion of fraud in the prior action of the company's weighmen.

IV.

By far the most important demand of the miners was for recognition of their union, — for "the incorporation in an agreement between the United Mine Workers of America and the anthracite coal companies of the wages which shall be paid and the conditions of employment which shall obtain."

The commission declares this question outside its jurisdiction. The operators had distinctly stated, in their letter proposing arbitration, that it should relate to the "questions at issue between the respective companies and their own employees, whether they belong to a union or not." The miners, *pro forma*, agreed to this limitation in the submission, Mr. Mitchell declaring that he appeared before the commission, not in his capacity of president of the union, but as the representative of the anthracite mine workers, selected by a convention chosen by them only, and not by the bituminous workers belonging to the organization.

It may be remarked that to compel recognition of a union by the award of arbitrators is virtually impossible. Collective bargaining between employers and the union necessarily implies voluntary action of both parties. Yet, as the commission itself states, the question of unionism was fundamental in the entire dispute and could not be ignored. The strike itself had been

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ordered by a union; the convention which agreed to arbitrate was, after all, strictly a union gathering; the representative of the miners in enforcing the award of the commission must necessarily be the union. The strike commission has virtually adjudged that the employers must grant all the recognition to the present union which it is possible for any authority to compel, and it suggests the desirability for the future of complete recognition of unionism in the system of collective bargaining. Yet it has so clothed its award as to avoid the appearance of deciding against the operators on this point. After the Chinese fashion, the operators have "saved their face," while the union is satisfied.

Definite and forceful is the commission's expression of approval of the general principle of labor organization:

> The development of the employers into large corporations has rendered personal contact and acquaintance between the responsible employer and the individual employee no longer possible in the old sense. . . . There seems to be no medium through which to preserve [peace and good-fellowship] so natural and efficient as that of an organization of employees governed by rules which represent the will of a properly constituted majority of its members. . . . The union, representing their community of interests, is the logical result of their community of thought. . . . The claim of the worker that he has the same right to join with his fellows in forming an organization, through which to be represented, that the stockholder of the corporation has to join others in forming the corporation, and to be represented by its directors and other officers, seems to be thoroughly well founded, not only in ethics but under economic considerations.

To this last remark, of course, the commission might have added very pertinently that the right to organize a union, and even to seek a degree of monopoly of the labor supply, is certainly as well founded as that of a group of capitalists, like the anthracite operators, to form a combination in order to protect their common interests and to monopolize a product of universal consumption. Pursuant to its quite obvious purpose to avoid ruffling the feelings of the operators unnecessarily, while deciding against them on so many points, the commission refrained from this addition, but the thought was doubtless in the minds of its members. No doubt a strong element in the public sympathy

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which was so widely accorded to the miners in their struggle, was the feeling that opposition to combinations of labor came with ill grace from one of the most powerful combinations of capital in the country — that "what is sauce for the goose is sauce for the gander." And this feeling has a more valid basis than the old saw expresses. The people are coming very generally to recognize the possible advantages of combinations of capital, and to favor regulation of them rather than destruction. And they see that, if the trust is to stay, the combination of labor is even more necessary than before as a protection to the great laboring masses. The commission in defending unionism voices the prevailing sentiment of the day,— the sentiment of the majority of our journals, economists, and leaders of public opinion. It is the abuses of which some unions are guilty, rather than the principle of organized association, that have provoked criticism. Notwithstanding the present agitation among employers regarding union policies, it is probably safe to say that most employers realize that the unions can never be rooted out; while the more open-minded of them admit that, under modern conditions, the workingman is almost helpless without combination with his fellows.

The coal commission, moreover, declared vigorously that the union which it approved is the effective union, — the union that can make the employer reckon with it in determining the fundamental conditions of labor; not the namby-pamby mutual insurance company and social club which is the ideal of many employers. To quote from the report of the commission:

> Some employers say to their employees: "We do not object to your joining the union, but we will not recognize your union, nor deal with it as representing you." If the union is to be rendered impotent, and its usefulness is to be nullified by refusing to permit it to perform the functions for which it is created, and for which alone it exists, permission to join it may well be considered as a privilege of doubtful value.

While, of necessity, the commission makes no formal award on this subject, it does strongly recommend that, after the expiration of the present award, the employers shall enter into collective

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bargaining with an organization representing their men. Though some changes in the constitution of the present union are suggested, it is the union now existing that the commission desires to see continue. To be sure, it sides with the contention of the operators that miners of the bituminous field should not be permitted to dictate the policy of anthracite miners. But while the commission proposes "an organization of anthracite workers, governed by anthracite workers," it adds that this "can be effected by making the anthracite mine workers a separate department of the union," which is precisely the case to-day. The commission does not even distinctly recommend that the constitution of the United Mine Workers be so amended as wholly to rule out sympathetic strikes in the one field for the purpose of aiding the other, though this is doubtless implied. It prudently refrained from definitely urging the entire separation of the organizations in the two classes of mines. There is a degree of community of interest among coal miners throughout the country, and some federation between the organizations in the anthracite and the bituminous regions is not only permissible, but is certain to continue.

The plan of collective bargaining with the union, suggested for adoption after the expiration of the present award, is based rather on the practice of the railroad brotherhoods, of which one of the members of the commission was a leading officer, than on that in the bituminous coal fields. It contemplates conferences and agreements between local or district committees of the union and the officers of particular collieries or companies, but apparently without general conferences to fix the basal conditions of labor for the entire region. There is little doubt, however, that, if the union maintains the ascendency it now seems to possess, this broader phase of collective bargaining will ultimately be superimposed upon the narrower one. The anthracite operators showed clearly that the great differences in conditions between the various fields and collieries utterly preclude uniform rates of piece payment. But this does not prevent the determination, by agreements covering the region as a whole, of uniform rates of pay for men working by the day, or of percentages of advance and reduction in piece rates. Though the conditions in the bitumin-

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ous mines are somewhat more nearly uniform than in the anthracite region, yet even there the base rate of piece payment fixed by the annual agreements actually applies to only a fraction of the mines. Local differentials are established, partly by the interstate conference itself, partly by local conferences. Unless such uniform standards are fixed for an entire competitive field, each employer, seeking to produce as cheaply as possible, is constantly tempted to nibble at wages.

The commission makes some minor suggestions regarding the constitution of the miners' union which are most commendable. It criticises the policy of allowing boys, with little sense of responsibility, an equal voice in the most important affairs, and recommends that no person under twenty-one be allowed to vote on the question of ordering a strike. It urges also that a two-thirds vote be required for the authorization of a strike, instead of a bare majority, as at present.

As already stated, all the expressions as to unionism so far summarized are suggestions merely. The formal, though indirect, recognition of the United Mine Workers is in connection with the proposed system of conciliation and arbitration regarding questions arising during the life of the award. This system is described in the next section.

Not merely may the report of the strike commission be considered as a victory for the principle of unionism, but the strike itself proved the power of labor organization. The United Mine Workers demonstrated the possibility of organizing effectively a heterogeneous mass of comparatively ignorant and unskilled laborers. Hitherto strong unions have been confined, for the most part, to the highly skilled trades in which the great body of the workers are English-speaking. The recent flood of low-grade immigrants has been considered perhaps the greatest hindrance to the organization of labor. A serious hindrance it often is, but the unanimity with which the foreign-born miners entered the union, and the loyalty with which they stood by it, show that the immigrants are by no means wholly lacking in ambition for a higher standard of living, or in the ability to organize and to maintain discipline. It is useless to attempt to prove that the main force which held the strikers in line was violence and intimi-

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dation. It was belief in unionism, and in the effectiveness of the United Mine Workers as an organization, that kept the great body of the strikers from returning to work. And it was the strength of organized labor, and of the sentiment in its behalf throughout the country, that furnished the funds which enabled the strike to continue without great hardship to those out of work. The anthracite operators, themselves closely organized and possessed of vast resources, had hoped, with apparent confidence, to crush unionism completely, and to remain dictators of labor conditions. They encountered a force greater than they had dreamed of. Beyond question, we shall see unionism year by year growing in favor with the working-class; we shall see the older unions becoming more comprehensive and new unions arising in the less skilled trades. The increasing strength of organized labor will more and more lead employers to form counter organizations. These employers' associations will often aim at first to destroy labor unions, but ultimately they will find their real function in checking extreme and uneconomic practices. Organization of both sides is a necessity. Only when the parties to the labor bargain confront one another with approximately equal economic strength can injustice on the one side or the other be prevented. It is nonsense to speak of the identity of interest of capital and labor. Each needs, must have, the other; but each will gain if it can secure the assistance of the other for less than it is worth. Organization will in the long run promote industrial peace, but it will be the peace that results chiefly from mutual dread of conflict, rather than from brotherly love. We may expect many a fight before that mutual fear and respect which stops fighting is generally established in the minds of employers and employees.

While according its approval to unionism, the strike commission seizes the occasion to read the miners, and through them unionists generally, a vigorous and, on the whole, well-deserved lecture. To uphold the principle of labor organization does not commit one to commendation of all the acts of unions or their individual members; just as, on the other hand, condemnation of the practices of which they, or some of them, are guilty does not logically lead to the demand that unionism be utterly destroyed. The

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commission sees that such extreme and tyrannical practices are mere excrescences, by no means essentially characteristic of labor organization, and that it is to the interest of the working people, of the labor unionists themselves, that they be lopped off. At first blush, the commission might perhaps seem unfair in dwelling so much on the sins of the strikers, while saying little of the unjust and unlawful practices of the mine operators. But the miners had received much at the hands of the commission; they could stand the censure with better grace than the operators, against whom the award had ruled in so many particulars. The aim of the strike commission was, not merely to settle the existing dispute, but to leave behind a spirit on both sides that should tend to permanent industrial peace; and this object could best be attained by scolding the miners and soothing the operators. Accordingly the commissioners confined their expression of disapproval of the employers' methods to the policy of hiring armed guards during a strike, — a policy in part forced upon the operators by the lack of adequate provision of law for maintaining order in times of bitter labor disputes. Some of the "coal and iron policemen," the commission says, were men of bad character, and, in any case, their presence was a source of irritation and of disrespect for the law they were supposed to enforce.

The most forcible strictures which the commission directs against the miners related to violence and disorder during the strike:

> Men who chose to be employed, or who remained at work, were assailed or threatened, and they and their families terrorized and intimidated. In several instances the houses of such workmen were dynamited, or otherwise assaulted, and the lives of unoffending women and children put in jeopardy.

The commissioners, while recognizing that strikers may be expected to feel resentment toward those who, by continuing at work or taking the places left vacant, endanger the success of the movement, insist, nevertheless, that the right to act in this manner is "part of the personal liberty of a citizen, that can never be surrendered, and every infringement thereof merits, and should receive, the stern denouncement of the law. . . .

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Approval of the object of a strike . . . cannot sanction an attempt to destroy " this right.

But this arraignment is softened, in the commission's report, by the assertion that the national leaders of the United Mine Workers condemned all violence, and that the anthracite mine workers, in the main, are well-disposed and good citizens. It points out that the idle and vicious of the community, who were in no way connected with the purpose of the strike, had a considerable share in the acts of lawlessness; but it is also implied that many of the strikers, and of the local leaders of the union, participated in or encouraged these practices; and the evidence seems to bear out this implication. The commissioners remind the responsible officers, and the peaceably disposed rank and file of unionists, that a labor organization, in ordering a strike, creates an occasion which is likely to arouse dangerous passions, and that it therefore owes to society the duty of exerting all its power to restrain the unlawful expression of those passions. The words of the commission undoubtedly represent the general feeling on this subject. Unionists will gain far more by retaining the respect of good citizens than by employing violent methods to hinder other work-people from taking the places of strikers.

The boycott also receives the attention of the commission. It excuses the "primary" boycott. The mere refusal of a set of men to patronize, or hold social intercourse with, any persons whom they, "with or without good reason, dislike . . . may sometimes be unchristian, but it is not illegal." This attitude, which is more liberal than that taken by some of the American courts, is qualified by the remark that even the primary boycott might be unlawful "if the ingredient of malicious purpose and concerted action to accomplish it were present." One might wish for a fuller expression as to what, in the judgment of the commission, would constitute such malicious purpose; it is precisely the vagueness of such phrases that has made the law regarding strikes and boycotts so inconsistent and unsatisfactory. But the boycott which was actually most conspicuous during the miners' strike, as in many other labor disputes of recent years, was of the "secondary" type. Here persons who have no special sympathy with the boycotters are intimidated into refraining

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from dealings with those against whom the grievance exists, or are themselves boycotted if they resist. In the opinion of the strike commission, "cruel and cowardly are terms not too severe by which to characterize" the boycott thus carried out. It is difficult for the present writer to see any element of unlawfulness in peacefully persuading persons not directly connected with a labor dispute to aid the side which they deem just by withholding patronage from the other, but where boycotters virtually compel others to take such action against their will, little can be said in their defence.

The strike commission does not directly discuss the important question whether it is legitimate for union men to refuse to work with non-unionists, but it apparently condemns that policy. The commissioners made it part of their formal award that "there shall be no discrimination against, or interference with, any employee who is not a member of any labor organization by members of such organization." Moreover, in the suggested scheme for permanent organization of the anthracite workers, they say that this does not mean that a minority of the employees in any colliery who may refrain from becoming members shall be "prevented from working or interfered with in their work. If they are willing to work under the conditions fixed for the colliery, their right to pursue their way unmolested should be guaranteed." If by interference and molestation the commission here refers to violence or to hindrance in buying the necessities of life, the justice of the principle is obvious. But if it means to maintain that union men ought, under no circumstances, to interfere with non-union men by refusing to work with them, or that such refusal is *per se* unlawful, the position, though one which is held by many, is not so evidently just. Unionists feel that workingmen, if they share in the improved conditions which organization secures, ought likewise to share in the expense of maintaining organization. They know that the comprehensiveness of the union, on which its success so largely depends, can, at least in some cases, be promoted by making it difficult for those who refuse to join to get work. They have observed that, where a considerable minority of non-unionists continue to be employed, the master has a strong lever with which to overthrow the organ-

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ization when a dispute with it arises. They insist that every workman owes an obligation to his class, and that the interests of the class are intimately bound up with labor organization. Against the claim that by refusing to work with the non-union man they are practically depriving him of his constitutional right to the pursuit of happiness, they reply that they have as much right to quit work for any cause they see fit as he has to continue working. They hold, too, that if a man, by taking a job at less than the union rates, tends to keep the great body of his fellows from bettering their lot, he is not exercising a moral right but is doing a moral wrong. These arguments of the unionists unquestionably have much weight. It is doubtless in some instances bad policy for unions to attempt to exclude non-unionists from employment. Some unions are too weak to succeed in it; others are so strong that they do not need to use this method, and only cause friction by doing so. But the practice seems neither morally nor legally wrong, and in some cases it serves really to strengthen organization.

V.

The method of settling the late strike, as well as the terms of the decision of the commission, are highly significant as regards the principles of collective bargaining, conciliation, and arbitration.

In the first place, the people virtually forced the contestants to arbitrate. The mediation of President Roosevelt had no legal authority, but it had the authority of an overwhelming public feeling that the business and comfort of a nation must not be sacrificed to the obstinacy of employer or employee. Not merely did the people demand investigation, as a basis for the formation of public opinion regarding the merits of the dispute; they insisted that the strike should cease, and that the parties should submit to the binding decision of arbitrators. The experience of the coal strike will almost certainly hasten the movement toward legally compulsory arbitration in the case of such serious and prolonged disputes. At the same time, the work of the commission showed clearly the difficulties that confront the arbitrator who is called upon to fix the general conditions of labor. Were

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it the custom generally to refer questions of wages to outside arbitrators, we should find ourselves utterly lacking in standards to which the awards should conform. No one who reads the report of the strike commission will find it strong evidence of the virtue of arbitration. The strike commissioners themselves evidently considered that the real value of their work lay in bringing about a temporary peace, during which the foundations of the system of collective bargaining should be laid. They did not even suggest, as part of that scheme of collective bargaining, a uniform resort to arbitration in case of failure of the parties to reach an agreement regarding the fundamental terms under which labor should be employed. Furthermore, they specifically declined to recommend legislation for compulsory arbitration under any circumstances. They do suggest that Congress and the state legislatures pass laws providing for compulsory investigation of grave disputes between employers and employees, with the hope, apparently, that public opinion would in most cases serve to compel settlement in accordance with justice as thus revealed.

Despite the obvious and great difficulties and disadvantages of arbitration as a means of determining general labor conditions, there is much to be said in favor of legally compelling resort to it in the case of prolonged strikes or lockouts which inflict serious injury on the people. The point may be reached when any settlement is better than the continuance of a war which entails even greater suffering on non-combatants than on the parties themselves. The award of the arbitrators will establish a truce; it will give time for thought, and in many instances will pave the way for the future determination of labor conditions by voluntary agreement. Compulsory arbitration, of course, should be confined to rare and extreme cases. Perhaps the best plan would be to authorize the President, or the governor of a state in the case of local disputes, to use his discretion in ordering arbitration when convinced of its necessity, subject, perhaps, to certain general statutory restrictions.

The chief objection to governmental arbitration is the difficulty of enforcing awards, especially against the workmen. Penalties for violating awards, however, would be almost unne-

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cessary, so powerful would be the compelling force of popular opinion on behalf of a formal decision of arbitrators in an important dispute. Compulsory arbitration will, it must be admitted, have a firmer basis when labor organizations shall adopt the policy, voluntarily or under legal compulsion, of becoming incorporated bodies. The fear of the unions that, if incorporated, they would be more readily subject to attack before the courts, is not without foundation, for the courts are by no means always fair to labor. But ultimately we may anticipate such a change in conditions that unions will find it distinctly to their interest to incorporate; and when that time comes a great impetus will be given, not merely to arbitration, voluntary and compulsory, but to collective bargaining and conciliation as well.

The strike commission recognizes the important distinction between questions concerning the general terms of the labor contract, and questions having to do with the enforcement or interpretation of those terms. It sees that arbitration encounters much less difficulty in settling differences of the second class than those of the first. It accordingly provides in its formal decision for a joint board of conciliation for the adjustment of disputes arising under the award, with resort to the decision of a single umpire if this board fails to agree. This is quite in accordance with the generally approved practice in those trades, both in England and America, which have been most successful in maintaining peace between employers and employees.

It is here that the commission grants effective, though slightly veiled, recognition to the existing anthracite union, the United Mine Workers. The award declares that differences arising during its term must be adjusted, if possible, by conference between the miners directly interested and the mine managers. If this method fails, they are to be referred to a permanent board

> to consist of six persons appointed as hereinafter provided. That is to say, if there shall be a division of the whole region into three districts, in each of which there shall exist an organization representing a majority of the mine workers of such district, one of said board of conciliation shall be appointed by each of said organizations, and three other persons shall be appointed by the operators, the operators in each of said districts appointing one person.

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It is of course precisely the three existing anthracite districts of the United Mine Workers of America which correspond to the description quoted, and it was merely to avoid hurting the feelings of the operators that the organization was not specifically named.

This board of conciliation is to act by majority vote. In case it is evenly divided on any question, an umpire for that particular question is to be appointed by one of the circuit judges of the third judicial district of the United States (Judge Gray). The decision of this umpire is to be binding. No suspension of work is to take place pending the action of the board of conciliation or of the arbitrator. There was temporary friction at first between the operators and the miners regarding the manner of choosing the representatives of the latter upon the board, but eventually the union was virtually recognized. The work of the board has proceeded slowly, and many questions have been brought before it. Already Judge Gray has been called upon to appoint an umpire.

The country is certainly to be congratulated upon the work of the Anthracite Coal Strike Commission. There is every promise that its award will be faithfully carried out by both employers and employees. While it cannot be hoped that friction will disappear, it is highly probable that, with the impetus which the commission has given to the movement, the system of formal collective bargaining between organized labor and organized capital will become established in the anthracite region as it has become established in the bituminous fields, and that strikes and lockouts will in considerable measure be done away with. The expressions of the commission will help to crystallize public opinion in behalf of the organization of labor, but against the unwise policies of some unions. Above all, the strike, and the work of the strike commission, have forced the people to give more thought to the great problems of labor than ever before, and that in itself may, in the long run, prove an advantage well worth the price which the people have paid.

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A NEW THEORY OF PRICES.

AS was to be expected, the violent agitation of the money question in the field of politics during the last ten years has resulted in efforts to recast the old theory of money. During the campaign of 1896, it was a notable fact that the advocates of the free coinage of silver were able to quote the authorities more frequently — although not always pertinently — than the advocates of the gold standard. In support of their contention, the friends of silver relied upon what is commonly known as the "quantity theory" of money, and were able to use on their side such distinguished names as Adam Smith, David Ricardo and John Stuart Mill. It is not surprising, therefore, that the first books to be published since that campaign, which make any pretence to a scientific treatment of the money question, should come from men who are anxious to place the gold standard on a solid foundation; nor that their books should be controversial in character. But it is a little surprising that two professors of political economy were so impressed by the silver arguments that they should deem it necessary to invent a new theory of money in order that the advocates of bad money may hereafter have no ground to stand upon. That is what Professors Laughlin and Scott have done, each in his own way, and it is my purpose in this article, less to review their books,[1] than to determine if possible whether or not they prove that the classical theory of money should be cast aside.

Professor Laughlin's work is the first of a series of six volumes which the author is hoping some day to complete. This first volume discusses the nature of money and credit, and has for its purpose the establishing of what Professor Laughlin calls "the true theory of prices." For some reason, Professor Laughlin disposes of the "quantity theory," to which more than one

1. The Principles of Money. By J. Laurence Laughlin. New York, Charles Scribner's Sons. — XVI, 550 pp.

Money and Banking. By William A. Scott. New York, Henry Holt and Co., 1903. — 8, 381 pp.

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hundred pages are devoted, before he states his own theory. As this does not seem to me a logical order, I shall first examine the theory which he propounds and then consider his criticism of the "quantity theory."

According to Professor Laughlin, the first use of money was as a standard, and this is still its primary and most important function. Some article having value because it is in general demand is chosen by a people as a standard of value. It may or may not serve as a medium of exchange. Price is the amount of the standard commodity for which a thing will exchange; it depends upon the value of the thing and the value of the standard. It is the result of an evaluation process, and cannot evolve until the values of both the standard and the thing itself have been determined. After a people have arrived at the value of the standard, it is an easy matter to fix the prices of goods, for all that is necessary is to compare the value of a particular good with the value of the standard. It follows necessarily that price is in no sense dependent upon the quantity of the media of exchange; on the contrary, the quantity of the media of exchange is determined by price; that is to say, by the value of the standard, increasing as the latter falls and decreasing as it rises. The quantity of money in circulation, therefore, is a result, not a cause, of the level of prices.

Applying this theory to existing conditions, Professor Laughlin claims that gold has a "world value." This value results from a demand that is twofold — monetary and non-monetary. He holds that the monetary demand is very slight, and that it might be reduced almost to zero if only proper use were made of credit.

According to Professor Laughlin, credit is a coinage of property into a means of payment. It supplies a most useful medium of exchange, but is in no sense a standard of prices and has no effect upon prices. It could affect prices only by affecting the value of gold, the standard. Under present conditions, to be sure, banking reserves are regarded as necessary as a basis for credit operations, and a certain amount of gold is needed for this purpose. It might appear, therefore, that the use of credit

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increased the demand for gold, and so tended to cause its value to rise; but the increase in the demand for gold from this cause is so slight as to deserve no attention. Indeed, if men had a proper idea of credit and saw clearly that it was based upon property, being a means of exchanging goods against goods without the intervention of the standard, the necessity for banking reserves would almost entirely disappear; for normal credit rests upon and is secured by property, not money. The notion that credit is a purchasing power like money, causing prices to rise, is a fallacy. Credit is born of business transactions, it is not the cause of them; and the quantity of credit media of exchange varies with perfect elasticity with the volume of business transactions. The demand for goods comes from goods, and credit is merely a device for expediting exchanges. It does not increase the demand for goods in general, for that is fixed, not by the amount of money or credit in use, but by the amount of goods in existence which men are willing to exchange. Since credit cannot increase the demand for goods, and has no appreciable effect upon the demand for money, it follows that it can have no effect upon the prices of goods. These are determined by the value of the standard, and can be changed only as that changes.

It is a remarkable thing about Professor Laughlin's *Principles of Money* that the work contains in fact no theory of money. He puts forth a theory with regard to the value of gold, and it is sound enough, to wit, that the value of gold depends upon demand and supply, conforming in the long run to the cost or expenses of production. But of money there is no theory. Indeed, he does not define money, but expressly declines the task in order to avoid "hair-splitting dialectics." What is commonly called money, he says, subserves one or more of these three functions: a common denominator or standard, a medium of exchange, a standard of deferred payments. He quite properly points out that the alleged service of money as a store of value is not a function peculiar to money, differentiating it from other things. But what is money? Why has money value, and what may cause changes in its value? To these questions, which a theory of money must answer, Professor Laughlin replies that gold is the

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standard, and that men by a mysterious process of antecedent evaluation make the prices of goods conform to the value of gold. If this answer is correct, then the money question is simplicity itself; in fact, there is no money question. All the problems that have given rise to the pyramidal mass of money literature instantly disappear. There is a standard of price, and there are various media of exchange, but there is no such thing as money.

Of the several fundamental errors in Professor Laughlin's book, the one that seems to me nearest the base of things is his notion about the evaluation of gold which is antecedent to the determination of price. Let Professor Laughlin explain his theory. On pages 361 and 362 he says:

> The difference between what I have ventured to call the true theory of prices and the quantity theory is very clear. The point at issue is partly one of time; since it has seemed to me that in the order of events the evaluation process between goods and the money metal takes place before the comparison could be instituted between the media of exchange (or amount of money in circulation) and the mass of transactions, — as is required by the quantity theory. On the one hand, I have not omitted to state the influence of an increased supply of (or lowered cost of acquiring) gold on its value; but the quantity of gold has, in my opinion, affected prices only through its influence on the value of the standard of prices, and not through its actual presentation as a medium of exchange against goods. The difference in theory, then, centres about the time and manner of the evaluation process between goods and gold. In my exposition, the evaluation goes on antecedent to the exchange operation, since the exchange cannot, philosophically or practically, take place until the rate of exchange has been settled; therefore the amount of the media of exchange offered for the goods must, of course, equal the figure set upon the goods exchanged. The quantity of the media of exchange is a result, not a cause, of the evaluation between gold and goods, and therefore cannot have been the means of fixing prices.

Let us see where the acceptance of this "theory" of antecedent evaluation leads us. If the value of gold must be fixed and determined before money exchanges are possible, then so must the value of wheat be fixed before any exchanges of wheat are pos-

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sible; and so on through the entire list of commodities. Value, or the exchange relation of goods, — and this is the definition accepted by Professor Laughlin, — is something fixed antecedently to all exchanges, and is not, as has been commonly taught by economists, the outcome of the clash of demand and supply, or of marginal utility as revealed in the higgling of markets. Professor Laughlin admits that the value of gold, like the values of other commodities, is determined by demand and supply (see page 337), yet these forces cannot possibly act unless men who want to buy and men who want to sell meet in the same market; and the value of any particular good, whether gold or wheat, is the result of their meeting and competitive bidding. What is the nature of that mysterious "evaluation process" whereby the value of gold is fixed before men meet for the exchange of goods against gold? That is something, it seems to me, which Professor Laughlin ought to explain and illustrate very clearly, for his whole "theory" of prices hinges upon it; but apparently it is so clear in his own mind that it needs but to be stated to be seen to be true. On pages 339 and 340 he gives what is probably intended for a concrete illustration, but it does not illustrate. He says:

> A large new supply of gold, either in the form of bars or coin, would probably appear first at the counters of public or private banks; the banks would retain only that amount which was needed for reserves by the existing conditions of business. These institutions, or owners of bullion, would have two destinations for the surplus gold not needed for reserves: (1) the circulation (as a medium of exchange), or (2) the arts. (1) If the country already had media of exchange other than gold — such as bank notes, deposit currency, and the like — sufficient to carry on existing transactions, then the injection of the new gold into the channels of trade as a medium of exchange would be resisted by the business habits of the community. If put into circulation, it would not stay there, — any more than did our surplus silver dollar pieces. Hence the surplus gold could not affect prices by being directly offered against goods as a medium of exchange, because it would not necessarily appear in that form. (2) On the other hand, if no more gold were needed in the reserves and the media of exchange, and if it finally went into the arts, the increased supply must there adjust itself to the existing demand in exactly the same way as would

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that of any other commodity. Gold articles (omitting the labor impressed upon them) would fall relatively to wheat and other goods. Plate formerly priced at fifty dollars, or fifty bushels of wheat, would, for instance, now exchange for only forty bushels of wheat (and the plate would be paid for by a check on a deposit account based on wheat thus coined into means of payment). But if gold plate falls relatively to wheat, so would gold as a standard of prices; since, under free coinage, nothing bars the presentation of plate and bullion to the mint, or the melting up of coins to go into the arts. The plate could have been coined — in round numbers — into fifty gold dollars; so that wheat, owing to the fall in the relative value of gold, would now be priced at a rise of twenty-five per cent. Obviously, such operations are not followed instantly by their results; since some time is needed for the effects to be worked out. It is not at all necessary to appeal to a later step, such as the actual increase of the supply of the media of exchange as compared with transactions, before we can ascertain a fall in the value of gold, as seems to be required by the quantity theory And yet due importance has been given in our demonstration above to the operation of the law of demand and supply on the value of gold, which is the more influential because the direct effect of expenses of production is masked by the durability of gold.

It is hard to treat this paragraph respectfully or seriously, yet it contains the whole of Professor Laughlin's theory, and is, therefore, worthy of careful analysis. The supposition is that a large new supply of gold has been brought into the country. This new gold, as Professor Laughlin says, would probably go first into the vaults of banks. Then what happens to it? According to Professor Laughlin, *if it is not needed in the reserves*, or *if the country already has all the media of exchange it needs*, the new gold will go into the arts and adjust itself to the existing demand just as would any other commodity; gold plate falls in value on account of the increased supply of gold, the prices of goods in general are raised because the value of the standard has fallen, and then the volume of the medium of exchange is increased. That looks clear, but it is not. First, if the new gold is rejected by bankers on the ground that it is not needed in the reserves or as a medium of exchange, why should it not equally be "surplus" in the arts and be rejected by manufacturers on the ground that "under existing conditions" they have

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no need for it? Second, how do bankers, or other owners of the new gold coin, persuade manufacturers to buy it? Third, when a banker has sold his gold, has he less cash than before, or is he still burdened with the same surplus? Fourth, granting that the new gold gets into the bullion market, *why* does it fall in value? No owner will be insane enough to offer it at less than $20.67 per ounce fine, the sum which the government will give for it; and since the prices of goods in general have not yet risen (for Professor Laughlin will not let them rise until the value of the standard has fallen), the relation of goods to gold is the same as it was before the new gold appeared, so that manufacturers employing it in the arts are under no inducement to increase their purchases of gold. Fifth, does Professor Laughlin mean to class this new gold, if coined and put into circulation, with the silver dollars coined under the Bland-Allison Act? If not, he is misleading the unwary reader. Furthermore, does he mean to imply that the new silver dollars were "rejected"? Then, why did the circulation absorb their representatives, the silver certificates? Sixth, are "existing conditions of business" so rigid and iron-clad that bankers with new gold to serve as a basis for credit cannot change them? Cannot bankers by lowering the rate of discount a trifle tempt business men to borrow more and enlarge their operations?

The paragraph quoted suggests several other questions, but the foregoing suffice to show that Professor Laughlin's new theory not only explains nothing, but has no logical relation with the facts of the business world. It is essentially bad and unsound in two respects:

First, the theory assumes that the business world is a static organism, with needs fixed and "existing conditions" immutable. Throughout this book one runs against the tacit assumption that the demand for any particular good is fixed and definite, and that a "surplus" arises when the supply exceeds this demand. With regard to money the assumption becomes positive and express; a certain amount of money (the standard) is needed to serve as a medium of exchange, and a certain amount to serve as banking reserves; the "surplus" is rejected. This statement would be true within limits if the phrase "amount of money-

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value" were substituted for "amount of money." The supply of money pieces, which is the thing meant by the expression "supply of money," is quite different from the supply of money value, or value in the form of money. At any given time a country needs a certain amount of value in a form readily exchangeable, and the substance to which men's wants give that kind of value is known as money. Changes in the quantity of that substance must affect the value of each unit, but cannot affect the value of the whole supply unless the economic activities of men are stimulated or depressed by the alteration in the value of the money unit. A large new supply of gold added to the existing stock would undoubtedly first be deposited in the banks. To the bankers it would seem a real increase in their lending power, and practically it would be such. Any banker knows what would happen next. Country bankers would look for worthy borrowers in their own fields and would make slight concessions in the rate of discount and in other ways, in order to enlarge their operations at home, and if unsuccessful, would send their "surplus reserve" to a city "correspondent" bank, receiving interest at one and a half or two per cent. The city banks would lower the call-loan rate in order to give the new money immediate employment, and we should have increased speculative buying on the stock and produce exchanges, with an upward tilt of prices.[1] The next step in the process of readjustment will be a rise in the prices of certain important commodities, especially those subject to what may be called a world demand. Bankers are the last people in the world to view with complacence hoards of idle money. The discount rates of the New York banks and of the great banks of Europe will be lowered and men will be tempted by this reduction in the expenses of production to enlarge their undertakings. The loans of banks will increase, and as a result

[1] This is what happened during the dull years of 1894 and 1895, when the country's supply of cash, as a result of mining operations and of the deficit in the national revenues, was being increased at the rate of some ten millions a month. The natural consequence of the speculative spurts of prices in those two years was a large exportation of gold, and this would happen in the case supposed by Professor Laughlin unless we assume that a "large new supply of gold" has been added to the world's stock as well as to our own.

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there will be livelier bidding for raw materials, and in consequence, first in one field, then in another and another, a rise of prices. Whether this process of readjustment shall begin early or late, and move rapidly or slowly, depends on the economic and industrial conditions of the time. If these are such that confidence in the future of trade and industry is growing, credit will be more liberally extended and prices will rise more quickly and to greater heights than if the new gold should come at a time when, because of war or recent industrial disaster, bankers were unusually conservative and *entrepreneurs* timid and depressed. But come it must, sooner or later, for the men who have the gold can get no profit out of it except either by getting rid of it or by using it as a basis for loans, *and in either case it must be used as money*. Professor Laughlin's contention that it will go into the bullion market and be sold to manufacturers is so absurd that I fear I do not understand him. Granting that the industrial or art demand for gold will increase as its value falls (although that assumption may be doubted), in order to save Professor Laughlin's theory manufacturers must be accommodating enough to increase their purchases of gold *before* its value has fallen, *i.e.*, before general prices have risen. After the prices of wheat and other articles have risen, since men are getting more money (gold or its equivalent), and since the prices of gold rings and chains, except as affected by the increased money wages of labor, have not risen, it is conceivable that the consumption of gold in the arts might increase; for not until after general prices have risen without a corresponding rise in articles made out of gold, have people any means of knowing that the value of gold has fallen.

The second essential defect of Professor Laughlin's theory is the assumption that people ever form any estimate of the value of gold, whether consciously or unconsciously, except by and through the purchase and sale of goods. The standard of prices is the one thing concerning the value of which people never speculate. In fact, they unconsciously assume that its value never changes. In this country and Europe no business man ever gives a moment's thought to the value of gold; different men are interested in the prices of different commodities and are concerned about probable changes in the future, but none of them is con-

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cerned about the present or future value of gold. The value of gold is not a matter of the slightest conscious concern even to dealers in bullion, or to dentists or jewellers or any other artisans or tradesmen to whom it is raw material or stock in trade. They pay the same "price" for it the year round. That "price" is fixed by law. Why should they worry about the value of gold? Who are the men, then, that accomplish that remarkable evaluation of goods to gold before prices are fixed? Where do they do it, and why, and how? If Professor Laughlin cannot answer these questions, he must admit that his new theory of prices is altogether in the air.

Now as to Professor Laughlin's theory of credit. It also is new, like his theory of money, and quite as unsound. I have already stated that Professor Laughlin defines credit as "the coinage of property into means of payment expressed in terms of money." In a work of fiction no fault could be found with that definition. It is metaphorical and graphic. But as a scientific definition it is loose, inexact, incomplete and untrue. Credit is an executory contract to deliver money, and is accepted as a means of payment because the acceptor believes the maker will be able and willing to deliver the money if called on to do so. Sometimes the acceptor's belief is founded on the fact that the maker of the contract has property, sometimes on the moral certainty that he will acquire property and dispose of it at a profit, and frequently on the maker's mere reputation for good character and business ability. If credit is coined anything, it is coined confidence. Credit is a contract to deliver money at a future time, just as a short sale of wheat is a contract to deliver wheat at a future date. Shall we, then, call a short sale of wheat a "coinage of property into a means of speculation expressed in terms of wheat"?

This new theory of credit, with the conclusion that credit cannot raise prices, is the logical partner of the author's new theory of money. Its fundamental defect, apart from the notion that credit is based on property, is the assumption that the demand for goods which comes from goods and which is the origin of their value, is identical with that demand for goods which is the origin of their price, so that the latter cannot change without a

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corresponding change in the former. No economist will deny that the demand for a good does come from other goods, or that in the last analysis all exchange is barter, a swapping of goods for goods. But in order to reach that last analysis we must travel over a rather long and circuitous route, paying very close attention to guideposts. Professor Laughlin's argument is this: Credit cannot affect prices, for it does not affect the demand for the standard or the demand for commodities, the demand for commodities being commodities, the supply of which does not vary with variations in the use of checks, drafts and bills of exchange. If banks extend more credit; Professor Laughlin would say, it is because more goods are being exchanged and there is a need for a larger quantity of the media of exchange; to say that an extension of bank credit will increase the demand for goods is to get the cart before the horse. Here we have a palpable confusion of the forces which make value with those which make price. An extension of bank credits, whether because of growing confidence in the business outlook or because of a new supply of gold, would not affect the values of goods in the long run. I say in the long run, for during the period of readjustment, since all prices would not rise at once, some commodities would temporarily have a greater exchange value than before. In the case of some articles, the prices of which are fixed by custom, generations might elapse before an adjustment to the higher prices of other things would be reached. But we may ignore these exceptions and qualifications and admit that the values of goods would not be affected. The general demand for goods would also not be affected. That is something which comes from goods, and in the case of any particular good is measured by the amount of other goods for which it can be exchanged. There would be only one good which was being offered in exchange in greater abundance than before, and that good would be money, or gold. The fact that it was being offered not as "spot gold" but in the form of "gold futures" (*i.e.* credit), would not make any difference; men with goods to sell would find more buyers in the market, more money ("spot" and "future") seeking their goods, and prices would inevitably rise; that is to say, the value of gold would fall. To the average man it would appear that the

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demand for goods had increased, for the money demand for goods is the only demand he knows, and it is the demand upon which his profits (a money item) depend. But the demand for goods upon which their value depends would not have increased. That demand is measured by the quantity of goods in general offered for an article. After the readjustment of prices had been effected, the exchange relations between the goods (changes actually affecting their values being left out of consideration, such as altered costs, new demands, increased supplies, *etc.*) would be the same as before. More money would be offered for goods, but since the value of money had fallen, this increase in the money demand for goods would represent no increase in the demand from goods. Thus when Professor Laughlin claims that credit cannot affect prices, on the ground that it cannot increase the demand for goods, he confounds value with price and fails to establish his proposition.

It hardly seems worth while to take space to show the fallacy of his contention that credit is based on property. I will merely call attention to the fact that the same piece of property on the same day frequently becomes the "basis" for several different credit-instruments, as shown clearly by Henry Thornton in a passage quoted by Mill.[1] Credit is based on neither property nor money, but on confidence, which is the product of a mental operation. Professor Laughlin is compelled to admit that credit does raise prices during a period of wild speculation or overtrading, but at such times, he says, credit is "abnormal" and is issued in excess of the value of the property it represents. In this explanation of abnormal credit we have again a confusion of prices with values. During a period of speculation it is prices, not values, which are inflated. At such a time optimism prevails, men believe prices will rise higher and are eager to buy goods, or to sell property they have in order that they may buy something they think more likely to rise in price; and all are unusually willing to accept credit, or money futures, in exchange for what they sell. If this speculation is carried so far that the outstanding contracts to deliver money cannot be fulfilled, or be offset by other contracts, the more conservative business men

[1] Political Economy, Book III, chap. xi, p. 4.

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having begun to lose confidence in the outlook and to cease to buy, then it is discovered that money has been "oversold" and panic ensues, money suddenly becoming the most important, the most sought-for commodity in the market. In precisely the same way wheat or any other commodity may be oversold on the floor of a produce exchange: for a time every one appears to have wheat to sell, and its price (and its value) falls; but if the bears overestimate their power to get wheat for delivery, a panic ensues, and wheat suddenly becomes the most important and most sought-for commodity in the market. The word "abnormal" cannot properly be applied to the short sales of wheat which precede the failure of a "bear" syndicate on the produce exchange, or to the short sales of money, or credit contracts, made by an unsuccessful speculator in real estate just before a crash. The boomer of property, scattering promissory notes, is a "bear" on gold; if his credit proves bad and causes loss to others, it is because he has, either wilfully or ignorantly, overestimated his ability to get money. According to Professor Laughlin, all credit is "abnormal" in so far as it exceeds the sum for which property can be sold. Evidently, then, a failure of the crops this year might by causing a slump in general prices render abnormal a large part of the existing credit in the United States. The distinction between "normal" and "abnormal" credit cannot be made until after the credit has ceased to exist; the one being credit that is redeemed, the other credit that is not redeemed. Such a distinction is worthless, for it throws no light on the conditions which make for security in credit operations.

In his criticism of the "quantity theory" Professor Laughlin gives abundant evidence that he does not understand it. The theory which he combats is a crazy-quilt affair made up of incongruous pieces taken from the expositions of a dozen different writers. I shall confine myself to a few sample "criticisms," and I shall pick those upon which the author lays most stress.

John Stuart Mill in his *Political Economy* presents a good elementary exposition of the demand-and-supply theory of money. It is open to criticism in some details, but if a reader is anxious to find out what Mill really meant and is willing to think a little,

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he will get from the book a sound theory in the main of both money and credit. It is to be regretted, of course, that Mill's first two chapters[1] on the subject, in which he considers the nature and value of money in a hypothetical state of society, credit not being used in any form, are so written as to give the unwary reader the impression that he is getting the whole of the discussion. In the subsequent chapters on Credit, Inconvertible Paper Money, Influence of Currency on the Exchanges and on Foreign Trade, Rate of Interest, and the Regulation of Convertible Paper Currency, the reader will find a wonderfully clear exposition of the laws governing the use of money and credit in the world as it exists to-day. Mill is not exact in his description of the demand for money, which he says "consists of all the goods offered for sale." "Every seller of goods," says Mill, "is a buyer of money, and the goods he brings with him constitute his demand." As a general proposition, under the hypothetical conditions assumed by Mill, this explanation of the demand for money is correct enough; but it requires analysis to prevent misunderstanding, and Mill did not stop to analyze it. Only in a general way, even in a state of society where credit is not used, would the goods offered for sale constitute the real or effective demand for money. The mass of goods under such conditions might be called a potential demand for money, but only those goods which had found buyers willing to take them at prices satisfactory to the owners could be said to be the real demand for money. This fact was perfectly clear in Mill's mind, as is shown by his treatment of the subject later on; but it did not occur to him, apparently, as worth while to make the analysis in his introductory chapters. Mill is also to be criticised for calling credit a "substitute for money." His own exposition shows that it is in no sense a substitute for money, but merely a device for increasing the efficiency of money as a medium of exchange, and so lessening the need for money. A promise to pay money in the future has become, under modern conditions, quite as useful and effective a medium of exchange as money in hand; hence credit, as a medium of exchange, may fairly be called a substitute for money: but the expression is to be avoided, since it is apt to give people

[1] Book III, chaps. vii and viii.

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the impression that credit is a distinct entity differing from money and independent of it.

Let us consider Professor Laughlin's criticism of Mill. He begins by declaring that Mill did not distinguish between the uses of money as a standard and as a medium of exchange. This is inaccurate. Mill shows clearly that one of the functions of money is to serve as a convenient "measure of value."[1] He did not, however, share Professor Laughlin's belief that some commodity was first selected as a measure of value and then finally adopted for use as a medium of exchange. Professor Laughlin then quotes from Chapter VIII, in which Mill points out that the supply of goods offered for sale is a demand for money. He discovers a fundamental error, to wit, that Mill was confused as to the demand for and supply of gold, which may be both non-monetary and monetary. Professor Laughlin fails to see that Mill was writing about money *per se*, treating it as a separate and independent commodity, as it must be treated if we are to have any theory of money. Even more unfair to Mill is the next remark: "It is possible that the standard metal may scarcely be used at all as a medium of exchange, as in England and the United States to-day." Does Professor Laughlin forget Mill's express declaration that the propositions laid down in that chapter required much modification before they were applicable in countries where credit was used?

He then quotes the following sentence from Mill:

> The whole of the goods being in any case exchanged for the whole of the money which comes into the market to be laid out, they will sell for less or more of it, exactly according as less or more is brought.

He calls this an identical proposition, and declares: "This is as much as to say that this quantity of money is required because this is the quantity required: a bucket is full of water, because the water fills the bucket." Professor Laughlin here again fails to perceive that Mill is writing about money *per se* and not about gold or any other commodity which has other than monetary uses. Mill's statement is perfectly true. The only utility which money possesses is its exchangeability. Men who have it can

[1] Political Economy, Book III, chap. xv, p. 1.

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utilize it only by getting rid of it. In no other way can they get satisfaction or profit out of it. That fact is fundamental in the theory of money, and is not to be disposed of as a mere identical proposition. Most of Professor Laughlin's criticism of Mill is vitiated by his persistent assumption that Mill, when writing about money, is writing about gold as used at the present time. Mill shows clearly enough in his chapter on The Value of Money as Dependent on Cost of Production that gold is subject to a twofold demand, monetary and non-monetary; but the reader of Professor Laughlin's book will get the impression that Mill was confused upon this subject.

Professor Laughlin is mistaken when he says that gold has a "world value" (an expression which he frequently employs), and also when he says that under a system of free coinage the value of gold as money and as bullion is the same. In a scientific treatise such statements are inaccurate and out of place. Gold has almost as many different values as there are markets in the world. In this respect it is exactly like wheat, corn, cotton and other commodities which are subject to a world demand. Wheat is never exported to Europe from the United States except when its value is higher there than here. The same statement is true of corn and cotton and gold. It is inconceivable that a commodity should be exported under any other conditions. Furthermore, it is inconceivable that gold coin should ever be melted or exported as bullion were not its value as bullion greater than its value as money. It is impossible to explain why bullion should ever be converted into coin and retained in service as money were it not sometimes more valuable as money than as bullion. As money, the gold possesses a utility which it does not possess as bullion, namely, that of instantaneous and universal acceptability, just as corn in the form of meal possesses a utility which it does not possess in the raw state. Professor Laughlin's theory of money gives us no explanation of the fact of coinage. If money is not an independent entity possessing value for reasons peculiar to itself, a something as different from the material out of which it is made as bourbon whiskey or Boston brown-bread is from a Kansas cornfield, then the coinage of gold into money and its retention in that form are inexplicable. The fact that

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the coinage of gold is gratuitous makes no difference. Suppose that the government should take over the property of the United States Steel Corporation, and that in order to encourage industry it should offer to convert into steel rails, free of charge, all the raw iron delivered to it. Under these conditions it is quite conceivable that the country's output of iron would first take the form of steel rails, but from that form it would pass into the countless other forms in which steel is serviceable to man. Would Professor Laughlin then hold that the value of steel rails was determined primarily by the value of iron, and was independent of the demand for and supply of steel rails? If an era of railroad construction should set in, unaccompanied by unusual activity in other forms of industry, would not the value of iron be greater in the form of steel rails than in any other form, and would not a smaller proportion of these freely coined rails be diverted to other uses? The utility of money is so unlike that of any other commodity that it is difficult to find analogies, but we have one here, I think, which runs parallel with the coinage of gold into money. Money possesses a distinct and peculiar utility, just as does the steel rail; it is freely manufactured by the government out of gold and so tends to have the same value as gold, just as steel rails would tend to have the same value as iron if freely manufactured by the government. The demand for money varies with the volume of exchanges that men wish to effect with money, and with the use of credit, which lessens the need for money for the consummation of a given volume of exchanges and increases its efficiency, just as does an increase in the rapidity of its circulation; and the value of money, or its exchange power, is entirely due to this demand, the value of each money unit being proportionate to the whole supply. In the same way, the demand for steel rails depends upon the volume of goods offered to railroads to be hauled and upon the growth of the country, and their value comes from this demand and is not a reflex of the value of iron; on the contrary, the raw iron gets its value in part from the demand for steel rails, and in part from the demand for other articles manufactured out of iron and steel. Steel rails do not derive their value from the value of the iron. It would be equally incorrect to say that money derives its value

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from the gold out of which it is made; it is the value of gold which is derivative, being due in part to the demand for money and in part to the demand for ornaments, *etc.*

Mr. Mill did not go into all these details about the competition for gold constantly carried on between the arts and money. Nor did he stop to emphasize the fact that if money were not a real thing, having a value of its own like other commodities, no gold would be retained in use as money even though the government coined it gratuitously. He had probably read no such volume as this by Professor Laughlin, and it had not occurred to him that it was necessary to demonstrate the obvious. The student of Mill will find, however, that these propositions, tacitly assumed to be true, underlie his whole exposition of money and credit.

On page 279, Professor Laughlin is "considerably taken aback to find that the preceding exposition of the quantity theory was intended to apply only to market prices." Why should this be surprising? It is consistent with Mill's treatment of demand and supply throughout his book; market values depend on demand and supply; normal values tend to conform to the cost of production. Mill shows that money is no exception to the rule if it is made of gold freely coined; then, since the value of the coin can never differ greatly from the value of the bullion, the value of money in the long run will conform to the cost of production of gold. That is Mill's doctrine, and it is sound, but it involves no abandonment of the theory that the value of money is governed by demand and supply. Why does the value of gold, or of any other good, conform to cost? Because the self-interest of men, if free competition prevails, impels them so to regulate the supply that the value shall not vary widely from the cost. In the case of gold, the adjustment of its value to cost is a slow process, for the stock on hand is so great that any possible increase or diminution of the yearly output of mines can have only a slight effect on its value. We have nothing here, as Professor Laughlin implies, that is inconsistent with Mill's theory of money. To revert to steel rails, it is true to say that their value in the market depends upon the demand for them and their supply; it is also true that their value tends to

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conform to the cost of production of iron. If the demand for steel rails greatly increases, there is an increase in the demand for iron and also in its value, so that it pays to work a poorer grade of iron mines. Does it follow that the value of steel rails does not depend on the demand for them and their supply, or that the value of iron is first determined and then the value of steel rails fixed in conformity therewith? Not at all. Iron owes a large share of its value to the demand for and value of steel rails. When money is made of gold freely coined, the relation of its value to the value of gold is the same as the relation of the value of steel rails to the value of iron. If steel rails were made freely by the government, an increase in the supply of iron would necessarily result in an increased supply of steel rails; but the new iron would not retain the form of steel rails unless the demand for rails gave them a value greater than the value of other articles made of steel (less cost of manufacture). Steel rails and iron would both fall in value, and if the value fell below the cost of production from the poorest mines, these would be abandoned and the supply of iron and steel rails would be gradually diminished, their value rising in consequence toward the level of cost. Here we have an ordinary instance of value determined by demand and supply in conformity with cost. If we substitute "gold" for "iron" (or steel) in the foregoing, and "money" for "steel rails," all the propositions will still be true. The cost of production of gold regulates the value of money in the same way that the cost of production of iron regulates the value of steel rails; but this is no abandonment of the theory that demand and supply determine the value both of steel rails and of money.

Mill's description of the part played by credit as a medium of exchange and as an instrument for the transfer of capital into productive ownership has always seemed to me one of the best expositions to be found in the literature of political economy. To estimate it fairly, one must bear in mind that Mill was writing, not a treatise on money and credit, but an analysis of the laws governing the production and distribution of wealth. His thought was primarily concerned with those utilities which contribute to the comfort and pleasure of men. Money and credit, which are mere instruments of exchange, not normally affecting the laws of

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exchange or the real rewards of labor, he naturally regarded as secondary in importance, and was apparently content if his exposition should make clear their relation to things more fundamental. From his point of view, precise definitions and formal propositions, such as he laid down with elaborate analysis in the discussion of capital, were not called for in the case of money and credit. Hence we have no definitions and no well-rounded theory, formally supported by axiom and argument on all sides; yet the man who thinks while he reads will, in my opinion, be unable to get away from Mill's conclusions. Credit, he says, is purchasing power, and "in whatever shape given" it acts on prices like money. This is true. Under modern conditions there is no demand for goods except that which comes from men who offer money for them, either money on the spot or money in the future, *i.e.*, either money in hand or credit. Sellers usually prefer the credit to the money, as a safer and more convenient medium, since it does not require to be counted laboriously and without endorsement is often valueless to third parties. Why should such purchases not raise prices? The fact that they do seems too obvious to need proof. Yet Professor Laughlin holds that they do not affect prices because they do not affect the value of the standard. That, however, is exactly what credit does. It affects the value of the standard just as do changes in the rapidity of circulation; it increases the efficiency of money (the standard) as a medium of exchange, making a single dollar (the standard) capable of effecting several exchanges at the same moment. Our modern credit system practically enables four or five men at the same time to claim ownership of the same dollar lying in the vaults of a bank, and to transfer the ownership of it in the purchase of goods with precisely the same effect as if each handed over the dollar itself. This is Mill's theory of the relation of credit to money and prices, and I must say that Professor Laughlin does not seem to understand it, for he neither states it nor touches it in his criticism.

I will not take up Professor Laughlin's examination of the views of other economists who support the demand-and-supply theory of money. I must reproduce, however, a remarkable footnote at the bottom of page 287, written in comment on General

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Walker's[1] theory with respect to the relation of barter and credit to prices. The note runs thus:

> In such cases, it seems to me, the correct operation is this: The introduction of credit lessens the demand for gold as a medium of exchange; the world value of gold tends to fall; gold, as a commodity, falls in value relatively to other goods whose expenses of production have remained the same; then follows a necessary adjustment of prices to correspond to the change in relative values; the change in prices is a result of the change in the relative values of goods and gold. The change in prices, then, is not brought about through the means of an actual increase in the quantity of gold offered for goods.

This note is surprising because it comes so near the truth. Credit does lessen the demand for money and so does tend to raise prices. We might accept the entire note as being a true and fair statement of the operation if we did not feel certain that Professor Laughlin has in mind a mysterious and unexplained process when he says: "Then follows a necessary adjustment of prices to correspond to the change in relative values." How the value of gold can change before prices change, or how a change in the value of gold could be known to any one before prices had fallen, is a mystery.

Having finished his historical review of the quantity theory, Professor Laughlin devotes a chapter to the critical examination of it. He states the theory as follows on page 314:

> The essence of the quantity theory is unquestionably this: (1) price-making can go on only through an actual exchange of "money" against goods; (2) and the level of prices is fixed by a comparison between the amount of exchanging to be effected (taking into account the number of times each commodity changes hands) and the quantity of "money" (however defined) in circulation (taking into account the rapidity of circulation). The only conditions under which the theory can be regarded as operative are the following:

The first two conditions under which the theory "can be regarded as operative" are: (1) a monopoly of the coinage, or of the

[1] The author states General Walker's views unfairly. For instance, he says (page 286) that Walker "boldly denies that cost of production operates in fixing prices," and that he "illogically rejects" credit as a medium of exchange

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issues of paper money, by the central authority; (2) where money is the only instrument of exchange. Does Professor Laughlin mean to admit that the theory is true under these conditions? It would seem so, for he says on page 315:

> What is true, given the hypothesis, is applied as true of the modern world of facts which are not included in the hypothesis. The transplantation of the "axiomatic principle" from its hypothetical soil to the conditions of actual life presents serious logical difficulties, and a necessity arises for stretching both the theory and the facts to meet the situation. This is the explanation, in my opinion, of the curious want of consensus in regard to what is "money" in the quantity theory, and to the variety of ways in which prices are supposed to be determined. The fact is, the fundamental assumption is false, and the wrong theory can never be made to fit the phenomena of price.

This is rather puzzling. If the theory would be true under a monopoly of the coinage, why does free coinage invalidate the theory, and what is that fundamental assumption which is false? "In the case of metals," he says, "no free coinage can be allowed; otherwise the coins would have the value of the bullion from which they are made." So the quantity theory would be true if coinage were restricted, but free coinage renders a new theory necessary because, forsooth, the value of the coin must conform to the value of the bullion. I have already exposed the fallacy underlying Professor Laughlin's idea that gold coin derives its value from the bullion.

The following paragraph (pages 315 and 316) illustrates Professor Laughlin's style of attack:

> The central error of the quantity theory lies, in my judgment, in the assumed premise that prices are fixed by a comparison between the goods to be exchanged (*i.e.*, the money work) and the media of exchange by which the work is done. This practically amounts to saying that the force regulating the price is the price, or the amount of money, actually obtained, whatever that may be. What, for instance, regulates the price of wheat? Why, of course, the amount of the medium of exchange for which it is in fact exchanged. How much wood can a man chop? Why, great discovery! the wood that he chops! Such a process of price-making (speaking now of all goods

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and of all the money in circulation) seems to be nothing more than comparing the goods with the outcome of the comparison; comparing the thing to be done with the thing done. It confuses the effect with the cause producing the effect. It gives us no clue to the causes affecting general prices. What fixes the prices of goods? Why, the prices which are fixed.

This paragraph strikes me as being puerile. When I first read it I supposed that the author must be indulging in humor or sarcasm, but the context forbids either saving supposition. How, indeed, can a man find out how much wood he can chop in a day? Shall he compare his biceps with the arm of a standard wood-chopper? Will Professor Laughlin tell us what fixes the value of wheat if it is not the quantity of other things that are offered for wheat? Has he found some way of arriving at value without the competition of buyer and seller? Apparently he has, for in the next paragraph he says:

> The offer of a certain amount of a medium of exchange for goods merely records the result of the antecedent price-making process.

Now, the price-making process is a specific instance of the value-making process; it determines the value of a good with respect to money. Are goods valued with respect to money in an exceptional way, or are the values of all goods determined in the same way? Professor Laughlin's reasoning implies the former, but he nowhere describes the nature of the antecedent valuation process.

One of Professor Laughlin's fundamental errors is his assumption that credit is something radically different from money. I have referred to this before, but the assumption involves a misunderstanding which I have not yet noticed. The following sentences (pages 317 and 319) contain what I wish to comment upon:

> Earlier writers gave no attention to the evolutionary process by which media of exchange, different from the standard commodity, have been brought into the commercial world. . . . For it is not even true that the price level changes according to the united quantity of "money" and credit.

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We have here the assumption that credit is something different from money, or the standard of price. If Professor Laughlin's theory of credit were true, and credit were based on goods, then credit and money would be different things. But credit is not a contract to deliver goods, it is a contract to deliver money. In all buying and selling, money figures on one side of the transaction; sometimes the seller takes money on the spot, often he prefers a right to demand money in the future. But in both cash transactions and credit transactions, money is the thing with which the purchase is made. If a farmer, having no money in his possession, goes to a country store where he is known, and obtains flour, sugar and coffee, agreeing to deliver to the storekeeper six bushels of potatoes the next day, are not potatoes the thing with which he has bought those supplies? Undoubtedly. The fact that he did not deliver the potatoes at the time of the purchase makes no difference in the nature of the transaction. Nevertheless, it was a credit transaction. The credit part of it was not based upon goods of any kind — neither potatoes nor any other property the farmer possessed. It was based upon the storekeeper's belief that the farmer was an honest man who would keep his word. Nor would the nature of the transaction be changed if the farmer never delivered the potatoes to the storekeeper, but delivered them instead, by request of the storekeeper, to one of his other customers from whom he had received money or something else in payment. Cases of barter, or of such credit-barter as is assumed in this illustration, are so rare that they can be ignored. In the modern business world credit is not a medium of exchange different from money. Our banks and clearing-houses, our laws and our civilization, have made it possible for men having no money at all to buy goods by agreeing to give money in the future. So highly developed is this method of business, one purchase being frequently offset by another, that a small quantity of money suffices for the settlement of a large volume of transactions. Nevertheless, money is the one and only thing which serves as a medium of exchange. In all the so-called credit exchanges, even though money does not appear on the spot, it is the thing with which the buying is done. The relation of credit to prices, therefore, is simple enough:

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it increases the efficiency of money; it increases the power of men to buy goods with a given quantity of money; it lessens the demand or need for money; and it must, therefore, lessen the value of money and so bring prices to a higher level than they would attain if all buying were done with money in hand.

Professor Laughlin is tilting at a windmill of his own construction when he attacks the quantity theory on the ground that since credit media of exchange are different from money, the defenders of the theory cannot legitimately hold that the value of money depends upon the quantity of the media of exchange. The value of money depends upon the demand for it and its supply. Credit, by increasing the efficiency of money, tends to lessen the demand for it, and so to lessen its value. That is what is incorrectly called the quantity theory of money; incorrectly, for that name puts improper emphasis on the supply. whereas changes in the demand are often more important. Professor Laughlin has not even jarred the foundations of this theory.

I can consider only one more of Professor Laughlin's theoretical objections to the quantity theory. I quote from page 321:

> The bimetallic supporters of the quantity theory very strongly urged that the demand for gold in the arts and for jewelry and ornaments had increased the demand for gold, increased its value, and hence tended to lower gold prices. Whatever the statistical data may be worth, the principle on which their argument is based was valid; they were right in claiming that anything which affected the demand (or supply) of gold would, theoretically, have an influence on the value of the standard and hence on prices. Of course, it admits that other things than the quantity of money in circulation affect price, and is a tacit surrender of the quantity theory. The non-monetary demand for the money metal (*e.g.*, gold) is an essential part of the demand, and it can affect the value of gold and gold-prices in the same way that any other demand — such as a monetary demand — can.

This paragraph, read in connection with a paragraph on page 325, where he defines "demand for money," contains a tacit admission of the truth of the quantity theory. If there is such a thing as a demand for money, does not that demand give money a value of its own, a value entirely independent of its material? It will not do to say, as Professor Laughlin does, that the value

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of our gold money is derived from the value of gold itself. Whence comes the value of gold? From the demand for it due to the fact that money has value, and from the demand for it due to the fact that gold ornaments have value. Ornaments have value because they satisfy certain human wants; money has value for no other reason. Gold is the material out of which men choose to make both, and its value is due to the demand derived from these dual uses. When the relation between the demand for and the supply of money gives to gold coins a value higher than that of the bullion they contain, more gold will be coined and retained in service as money; and, conversely, when the increasing demand for gold in the arts makes 258 grains of standard gold more valuable to the jeweller or the banker as bullion than as money, gold eagles will be either melted and converted into ornaments, or packed in kegs and shipped to foreign countries as so many ounces of gold. Professor Laughlin thinks the quantity theory disproved by the fact that an increase in the supply of gold must cause a fall in the value of gold money. He thinks that this is an admission "that other things than the quantity of money in circulation affect price, and is a tacit surrender of the quantity theory." On the contrary, it is a confirmation of the quantity theory. The new gold comes into circulation as money for the simple reason that it is not wanted in the arts at the existing level of prices, and it cannot raise prices until it has been coined and put into use as money. New gold raises prices only by increasing the quantity of money in circulation and in the reserves of banks. That it could act on prices in any other way is inconceivable.

"Lastly," says Professor Laughlin, "the quantity theory does not explain the facts." Then he goes on to say (page 327):

> Taking the available data at hand for the United States, one would have no hesitation in saying that in no single case examined has there been any proportion whatever between the movements of prices and the quantity of the circulation. . . . It (the quantity theory) has had its origin in pure deduction, unconfirmed by statistical inquiry.

He then tests the theory by an examination of the movement of prices from 1860 to 1891, and by means of a diagram shows that

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"there is no correspondence whatever between the quantity of the circulation and the level of prices." This familiar statistical test of the quantity theory, so called, should perhaps still be treated seriously and in detail, but I will leave that task for some one who has more patience with naked *non sequiturs* than I. Any man who thinks that Professor Laughlin proves or disproves anything by his statistics needs a thorough course in the elements of the theory of money; until he has had that, one might as well reason with an inverted umbrella. I cannot help calling attention to the fact, however, that Professor Laughlin does not understand the problem, as is shown by his conclusion that there has been "no proportion whatever between the movements of prices and the quantity of circulation." No sane man, believing in the demand-and-supply theory of money, would expect to find any such proportion. By "circulation," Professor Laughlin means the amount of "cash" in the country (under "cash" I include money — that is, coined gold — and all forms of credit having the same general acceptability as a medium of exchange). The "circulation," therefore, is part money and part credit, and it by no means includes the greater part of the credit instruments that are used. Evidently a comparison of price movements with changes in population and "circulation" during any given period must be absolutely bootless. The statistics for such an investigation as Professor Laughlin pretends to make have not been assembled, and it is doubtful if they ever can be. A diligent man, if he can only win the confidence of his readers by the eloquent utterance of safe and inspiring platitudes, can by the use of alleged statistics prove or disprove any proposition. Professor Laughlin is sarcastic about the quantity theory, so called, on the ground that it is pure deduction. So are the fundamental laws of physics, the law of gravitation and the theory of the solar system. If a man will only get up early enough in the morning during twenty years of his life and take the proper observations, he can get apparently incontrovertible statistical evidence that the sun rises in the east, and moves around and over the earth. Professor Laughlin should have respect for statistics of that kind, for his are of the same sort.

I find that I am playing the critic more than I had intended,

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but Professor Laughlin's book is such a luxuriant bed of fallacies that I cannot get away from it. Just one more instance. On page 355, where he is trying to show how the prices of goods may fall, the value of money — *i.e.*, gold — being unchanged, he says:

> Supposing the demand and supply of the money metal to be unchanged, an improvement which lowers the expenses of producing a given unit of one article, or of all articles, would necessarily affect the general level of prices, and show itself in a lower range of prices.

Notice the argument; the money metal is not to change in value, but general prices are to fall. And this, notwithstanding Professor Laughlin's acceptance of the orthodox definition of value, namely, the exchange power of goods!

Professor Laughlin's theory of money, so called, is seen at its worst in his chapter on Prices and the International Movement of Specie. Here we discover why he insists throughout his book that gold has a "world value." Since the value of gold is the same the world over, and the prices of goods conform to their expenses of production, the exports and imports of a country are determined by the relative expenses of production. When there is a difference in the value of exports and imports, gold is transmitted in settlement of the balance. If that is not the old mercantilist "balance of trade" theory, then I have not understood it.

Professor Scott's *Money and Banking* is a volume of 380 pages, and is less pretentious and dogmatic than Professor Laughlin's. There are, in fact, indications that the author has sat at the feet of Professor Laughlin, for his book presents practically the same theory of money, although the exposition is even more vague and unsatisfactory. Like Professor Laughlin, he does not define money, but makes the word include bank notes, silver certificates, greenbacks and subsidiary coins. Although his book is a treatise on money and banking, he presents no theory of credit whatever, and no discussion of the important relation of credit to prices. Like Professor Laughlin, he uses the words "currency" and "circulation" in the vaguest way, leaving the reader

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uncertain whether he includes or excludes such credit instruments as checks and bills of exchange. There is no excuse for this loose use of terms. Money, if it is anything in the scientific sense, is the thing possessing universal acceptability or exchangeability. It is what Professors Laughlin and Scott insist upon calling the standard. All other forms of so-called money are credit instruments. Although those credit instruments which have general acceptability are popularly known as money, there is no reason for calling them such in a scientific treatise; they might be called money-credit or credit-money, and thus be clearly distinguished from money itself. The word "cash" as commonly used includes money and all forms of credit money, and there is no need for employing it in any other sense. The word "circulation" is practically synonymous with cash. I am not certain that Professors Laughlin and Scott have used these words as I have defined them, and I am not certain, therefore, that I understand all they have written.

Professor Scott's book, I regret to say, does not deserve much attention. Horace White's *Money and Banking* is unquestionably superior to Professor Scott's in its treatment of credit and banking, and will be justly preferred by readers and teachers. Professor Scott is seldom clear and definite. While his book presents in a hazy way the same theory of prices that we have found in Professor Laughlin's work, he makes no effort whatever to explain how prices are determined. He devotes a chapter to a criticism of the quantity theory of money, but his objections to it have all been sufficiently met in my discussion of Professor Laughlin's book. I will give a specimen of his argument taken from page 63:

> That the total volume of the currency is an effect of which prices are one of the causes, is, as we have already remarked, axiomatic. It follows from the very nature of a medium of exchange. As a go-between in every trade, money must reflect prices, and there must be as many units as there are dollars' worth of value exchanged at one time. The number of dollars' worth of value exchanged, however, is determined by the number of times the value of the specific amount of gold or some other commodity, which we have agreed to call a dollar, is contained in the value of the commodities bought and sold upon

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the markets, and not by the number of pieces of money which may chance to be somewhere stored away or capable of being manufactured. In other words, the money is manufactured for the exchanges, instead of the exchanges being effected for the purpose of using the money.

On the next page I find the following:

> For example, there can be little doubt that, if various forms of bank currency were substituted for the English sovereigns and half-sovereigns, the French twenty- and ten-franc pieces, and the German twenty- and ten-mark pieces now in circulation, the value of gold would be affected, and with it prices. Such a substitution, however, would not necessarily involve any change in the total volume of the currencies of those countries.

Yet on page 61 he refers to "the axiom of monetary science that when prices are high a larger amount of money is needed to effect the exchange of a given number of commodities than when they are low." I am unable to understand how he can reconcile this "axiom" with his conclusion that no more money or cash would be needed in England if prices rose. According to Professor Scott, the demand for money depends upon prices. For instance, on page 67 he says: "The demand for currency is measured, not by the number of commodities to be exchanged at a given time, but by the number of each multiplied by its value or price." Yet on page 185 he declares that the demand for cash is unusually large during a panic. Now, during a panic the most notable phenomenon is the fall of prices. Professor Scott does not explain why a panic causes the suspension of his axiom.

His discussion of seigniorage illustrates the vagueness of his method. He takes up the subject on page 78 and states in a general way the views of various writers. One is curious to know what he himself will have to say about Ricardo's theory that uncoined seigniorage, no matter how great, does not affect prices. But he does not touch the question. Toward the end of his discussion of seigniorage he says: "In order properly to weigh these arguments a number of considerations are necessary which must be deferred to later chapters of this book." There may be more in the book about the subject, but I cannot find it.

Although his book is entitled *Money and Banking*, and gives

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very general descriptions of the leading banking systems of the world, there is, as I have said, nothing about the nature of credit, and no discussion of the advantages of an elastic currency. The word "elasticity" occurs a few times, but he does not tell why elasticity is needed in the currency, nor what are the evils of a rigid currency. I searched also in Professor Laughlin's book for the familiar argument, for I knew him to be an advocate of an elastic bank-note currency and was curious to know how he could justify his position without damage to his theory that prices are antecedently determined by reference to a standard of value. I found nothing on the subject. Professor Scott certainly ought to have thrown some light on it in his book. If he intends to be consistent, he will be wise if he takes the position that elasticity in the currency is not necessary; for the argument upon which the demand for elasticity is based takes it for granted that an increasing demand for cash, if not satisfied, causes a rise in the rate of discount and a fall of prices, — phenomena which both Scott and Laughlin, it seems to me, must deny.

Professor Scott does not feel called upon to discard the classical theory with regard to the international movements of specie. He does not advance the proposition that gold has a world value. An increased output from gold mines, he says, tends to raise all prices by lowering the value of the standard. "This effect is first felt in the country in which the mines are situated, since the new metal finds its way first to the local markets." If the rate of exchange, as the result of increased imports, rises beyond the export point, gold will leave the country. "Its price on the local bullion markets will correspondingly rise and the disturbed equilibrium of prices be thus restored." This would be sound enough if it did not imply that gold has different prices in the bullion market. Does he mean that any banker or dealer in bullion is ever willing to pay over ten dollars for 258 grains of standard gold, or that an eagle will ever sell for less than that? Professor Scott should have explained to his readers how the "prices" of gold on the bullion markets are determined.

Neither Professor Scott nor Professor Laughlin is able to explain the fact of fiat money, *i.e.*, money the value of which does not conform to the value of the material out of which it is made,

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free coinage not being permitted. Professor Laughlin, to be sure, admits the possibility of fiat money when he implies that the so-called quantity theory is true if the government has a monopoly of the coinage, but he does not explain the necessity for such admission. Both he and Professor Scott hold that depreciated paper money, such as the greenback during the Civil War, owes its value to constant reference to the standard, a fall in its value being a result of increasing doubt as to its ultimate redemption. Professor Scott holds that during the greenback era this country had two standards, — a primary standard (gold), and a secondary standard (greenbacks), — and that people quoted prices of articles in two standards. As a matter of fact, this practice was never general even during the uncertain years of the war; after 1865 practically all prices (except on the Pacific coast) were in greenbacks, and men in pricing goods gave little thought to the relation of gold to greenbacks. If doubt about the ultimate redemption of paper money is the only cause of its depreciation, how can Professors Scott and Laughlin account for the depreciation of the notes of the Bank of England during the "restriction period"? Gold was then quoted at a premium of 16 per cent, yet the majority of English business men, and people in general, stoutly protested against the resumption of specie payments, holding that the notes of the Bank of England were better than gold. No one had the slightest doubt about the solvency of the Bank of England. There was universal confidence in it. The bullion committee, however, decided that the notes had depreciated because of excessive issues, and gave very good reasons in support of their opinion. I am at a loss to see how Professors Scott and Laughlin can explain the interesting movement of prices in England between 1800 and 1810 without abandoning their theory of money.

To sum up, the peculiar theory of prices put forth by Professors Laughlin and Scott fails to explain the phenomenon of price, for the value-making process which is claimed to be antecedent to price-making is mythical and inconceivable; it fails to explain the international movements of gold; it fails to explain the value of fiat money or of depreciated paper money when used by a people

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who have entire confidence in its goodness; it fails to explain the fact that seigniorage raises the value of coins above that of the metal they contain; it fails to explain the fact that speculative and wholesale prices are weak in New York when the country makes its autumnal draft upon that city's cash reserves; it fails to explain the fact that when this country's supply of money or cash is increased arbitrarily, as by an excess of government expenditures, the bank rate of discount is lowered, prices here and there lifted, and gold exported. All these phenomena the demand-and-supply theory of money explains as clearly as the theory of gravitation explains the phenomena of the solar system.

If the demand-and-supply theory of money is as clear and satisfactory as I have declared, how shall we account for the fact that two very intelligent, industrious, conscientious and successful teachers of political economy should find it fallacious? That question is psycho-sociological in character, and any answer I may suggest must be tentative. My own explanation is that this new theory of prices is a posthumous product of the silver scare of 1896. The authors, especially Professor Laughlin, were strenuous defenders of the gold standard in that memorable campaign, and doubtless were much annoyed by the adroit references of the enemy to the writings of Locke, Hume, Ricardo and Mill. The friends of silver, as can easily be shown, made fallacious use of the so-called quantity theory. They assumed, for example, that the demand for money was practically infinite, and would raise the value of silver to any desired height if that metal were freely coined into money. During the campaign, however, their arguments were very effective, and it is not surprising that they made converts. Many a financial heresy, like Professor Laughlin's new theory of prices, has had its origin in the exigencies of politics. The rigid bank-note system of England, for instance, which cannot perform any valuable service to the country, is the indirect product of the Restriction Act of 1797. That act gave England fiat money and taught the country bankers of England to regard the Bank of England note as being identical with money; so they used it as a reserve for the redemption of their own notes, England thus getting one credit system based upon another. The Restriction period also convinced country

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bankers that redemption was of little consequence. In that country, as in the United States at that time, although no economist had sanctioned the idea, business men and bankers quite commonly believed in Professor Laughlin's theory that credit is based upon property, and that redemption in money is an unnecessary imposition upon the banker. The false ideas then prevalent about money and bank notes led to speculation, inflation and panic. In England, Peel's Bank Act of 1844, and in this country the Independent Treasury Act of 1846, were the results of bad banking practices imposed upon bankers by politicians. It would be a pity if the great debate over the standards should impose on the world for any length of time a theory of prices so barren and unreal as that expounded in the books under review.

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THE ECONOMIC SIGNIFICANCE OF CULTURE.

IT would help to clear up those issues which have been brought forward by the economic interpretation of history if scholars generally understood the true character of certain human interests which we are in the habit of grouping under the word "culture." To the historian who comprehends the part which language and manners, literature and art, amusements and religion have played in the drama of human progress, there is something almost perverse in the proposition that all which has happened in the world can be explained in economic terms. Not only does economic explanation in history savor of materialism in that sense of the word which is ethical rather than scientific, but it seems to be wholly inadequate.

Yet the question raised, as all will admit, is perplexing. The word "economy" has become one of the most elastic in the vocabulary of science. It means the whole system of industry and business whereby a modern population sustains existence. It means the production and distribution of wealth. It also means the total phenomena of wants and satisfactions. Whenever the economist, turned historian, discovers that he cannot account for some social development in terms of industrial organization or of industrial methods, as Karl Marx attempted to do, or in terms of wealth distribution, as Hyndman and Loria have tried to do, he falls back on the most abstract meaning of his words, and has no difficulty in proving that since all the forms of culture are satisfactions of wants, they are economic phenomena. He might demonstrate also that they are cosmic phenomena, and the one "interpretation" would be as illuminating as the other. Admitting that cultural products are both cosmic and economic, our common sense assures us that they are distinguishable from undifferentiated comet tails, and that it would be interesting to know wherein their economic nature differs from that of stock yards and rolling mills. The crux of the whole question is right here. Are the facts of culture economic in some precise sense, as the facts of industry are? Is culture in general *an economy*,

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— of a different order from the economy called industry; and if so, which economy is radical, or primordial? Is culture an offshoot of industry, or has industry been evolved from culture; or are there two economies, independent and coördinate from the beginning? These questions can not be answered by scientific intuition.

On the one hand we know that in modern life churches and theatres, clubs and "society" are maintained from the products of iron and cotton mills, coal mines and wheat fields. On the other hand, we know that the Ingævones and Herminones, whom Tacitus described, had neither mills nor mines, nor much cultivated grain, nor marts, and yet they had religion and a splendid mythology, choral song, and social festivals. Historically, culture had a vast development before industry got beyond its rudest beginnings. Industry, however, supplies us with material goods, food, clothing and shelter, which minister to those bodily needs that are older than the cravings of the mind. Moreover savages and barbarians have had practical as well as ceremonial arts. In one way or another they have obtained something to eat before devoting themselves to tom-toms and prayer. Altogether, antecedent and consequent in our investigation seem to be mixed.

In the attempt to get them into a genetic order let us first carefully recognize facts that are beyond argument. It is by directing human labor and by controlling the processes of nature that modern industry creates vast quantities of goods, including food supplies in excess of what nature offers freely in unsolicited bounty. In achieving this end modern industry is dependent upon man's acquisitions of scientific knowledge and technical skill. Knowledge and skill have had beginning and growth in man's ceaseless interrogation of nature through unnumbered generations, and in his attempt to imitate her ways. These questionings and imitations lead back into a maze of religious ceremonies and beliefs, back into the world of animistic ideas, and then yet farther back to those earliest forms of mimicry, of which language and manners were born. Modern industry, then, presupposes among its antecedents the whole cultural history of man considered as a mental preparation for his present task.

This, however, is not all. Industry presupposes certain mo-

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tives for productive effort, and these are more than pangs of hunger and cold. They include not only the demand of the body for nourishment and protection, but also the demand of body and of mind for exhilarating activity; for the pleasures of sight and of sound, of imagination and of sentiment, and for the deeper satisfactions of understanding and of faith. In their turn all these satisfactions are concretely embodied in cultural forms handed down to us from the past. On the side of motive also, therefore, modern industry presupposes the long historical evolution of culture.

Thus, indirectly at least, culture has an economic function. As motive and means — a necessary antecedent of the whole industrial scheme of the modern world — it must be recognized among economic causes. Has it, then, or has it had in the past an economic function more immediate, an economic character less disguised? Did it originate in economic effort? As a product of evolution it must be regarded as in some way related to the struggle for existence. Did it grow and differentiate because it contributed in a practical way to life maintenance, or only because it happened to be correlated with useful activities, and fortunately added something to the variety and interest of an existence which it had no power to sustain?

The answer to this question is not doubtful. In its earliest forms culture is an *economy;* a practical, utilitarian thing. Only in its late developments does it become a diversion. To the primitive man culture in general, like music or dancing in particular, is a serious business.

Bird and beast subsist on what they find. They do not in any true sense of the word produce. Among the more highly evolved animals, however, we witness activities which in a measure achieve the same end that economic production does. They so far contribute to success in the food quest that a relatively abundant nutrition is obtained. They consist of those mimicries which beguile game, and of those cries and gestures which are the basis of coöperation among creatures that hunt or fish in bands. Here are the beginnings of all language and of all art. Primitive man develops the cries of bird and beast into articulate sounds, and presently into predicative discourse, the indispensable means of

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communication in the higher forms of aggressive and defensive coöperation. He develops mimicry into dance and song; and for ages the supreme purpose for which he cultivates these arts is to enchant the realms of plant and animal life, on which he relies for his food. And presently he develops mimicry into drama and ceremonial, into carving and drawing, into weaving and building, until he has equipped himself with technical arts, with pageantry and worship, and all with a practical intent. He piles his altars with rice or with maize, and sprinkles them with water to bring down saving rain, and his worship is as purely economic in motive as is that of the modern man of affairs who puts his contribution into the plate to fortify his credit at the bank. Casting bread upon the waters is an old practice, in which worship and economy are at one.

Nor was this ceremonial economy of primitive man as ridiculously idle as the modern skeptic may imagine. It did in fact very greatly contribute to economic security. Little by little, out of such enchantments as those of the native Australians whereby the simple children of nature believe that they multiply witchetty grubs, on which their uncertain life depends, were developed those totemistic taboos which are found everywhere in the later stages of savagery and the earlier stages of barbarism. The effect of taboo was to preserve multitudes of plant and animal species from indiscriminate destruction, and, what was equally important, to compel men, forbidden to subsist on this and that, to seek other food supplies and thus to diversify consumption. The significance of this latter fact will again be referred to later on.

And even where mere mimicry and supplication failed to extort from nature that which she yields only to patient industry directed by scientific knowledge, they increased man's well-being in another way. Differentiated into a thousand modes of picturesque and enlivening activity, they became habits which man has continued to cherish for the immediate pleasure which they afford. They multiplied his interests, expanded his ideas, disciplined his mind. They provided immediate satisfactions, and continued to provide them for all those human needs which are not merely material; while, at the same time, they contributed to

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to his material security by enlarging and conserving his food supply.

Whatever, then, culture may be to-day, it has been in its time an economic system, as truly as industry is now. It was the economy of primitive man. It was the first means of differentiating and of protecting the food supply, and it was the first means of d fferentiating the immaterial needs, thereby enormously broadening economic demand, and strengthening economic motive. Yet it was a radically different economy from that which now ma nta ns the enormous population of the world. In the hope of discovering the exact scientific aspect of the difference, let us submit the bare outline of facts which has thus far been given, to a more precise analysis.

In a paper on "The Economic Ages," published in this review in June, 1901, describing the evolution of economy from a psychological point of view, I recognized three stages of development, namely, the organic, the instinctive, and the rational economy. The economy of plant life is organic only. The economy of animal life is organic and instinctive. The economy of human life is organic, instinctive and rational. Man alone systematically attempts to improve his condition. His first experiments, however, directed by animistic conceptions of nature, are with the arts of enchantment and propitiation. His economy is ceremonial. Not until late in his career does he become a systematic worker and develop a business economy. The ceremonial economy of primitive man and the business economy of modern man are both in a broad sense rational — they have passed beyond the economy of mere instinct — but the one is animistic, while the other is scientific. A further distinction between the two, to which I am now calling attention, is based not on any psychological aspect but on the inherent character and methods of the economies themselves. Naturally, this character is correlated with stages of mental development. But the line of division falls not between instinctive and rational, but between ceremonial and business systems. The organic, the instinctive and the ceremonial economies have an essential something in common which marks them off from modern industry, and which makes their phenomena the subject matter of one grand division of economic

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science, while the phenomena of industry belong to another grand division. If this distinction can be made clear, the true significance of culture as a preliminary economy, and the antecedence of cultural phenomena to nearly everything which we nowadays call economics, will be established.

We must begin with a brief reference to phenomena of wants and satisfactions, which are the data of all economic theory. The need for food is so far from being the only original want that in fact it is coordinate with demands equally imperative, no one of which, taken by itself, is antecedent to another. Life would perish as quickly if the energies which are evolved by the assimilation of food could not normally be expended, as it would through starvation. Expenditure in cell division and reproduction is the universal mode, and it results in that multiplicity of organisms which conditions the life struggle for each one. It is supplemented in the animal creation by motor activities, and these, in the higher species, are differentiated in endless complications through their correlation with a developed nervous system. All of these activities of body and mind as they appear are enlisted in the food quest, in the phenomena of reproduction and race maintenance, and, finally, in determining the relations of organisms to one another. Again, each mode of activity once established, creates a continuing demand in the organism for the further enjoyment of such expenditure of energy. Accustomed to the chase, beast or man suffers miseries if deprived of freedom. Accustomed to the functions of race maintenance, the organism that is deprived of offspring finds the pleasures of its own existence largely curtailed. Long used to the presence of fellow creatures, and to activities of antagonism or of sympathy, the individual in isolation begins to perish, as surely as if he were deprived of food. Finally, every activity of the mind in its questioning of nature, and in its practical efforts to ameliorate the conditions of life, creates a craving for its own renewal.

As rapidly as activities are differentiated the need for discharge of energy in each new channel becomes a demand for a particular class of satisfactions, which must not be confused with the final satisfaction of actual expenditure any more than food is mistaken for the pleasure of consuming it. Food is a preliminary or me-

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diate satisfaction. Means are necessary also to the end — pleasurable activity. In general they may be described as stimuli. For the pleasures of the chase the stimuli of forest and game are needed. For the active pleasures that young creatures have in the antics of play they need the stimulus of one another's presence. For all of the lighter pleasures of intellectual activity we need the stimulus of fellow minds. For a major part of our happiest emotional activity we need the stimulus afforded by the presence of those who, through long association with us, have become objects of attachment. In highly evolved societies the stimuli of intellectual and emotional activity have become innumerable, and to provide them is as much a part of man's foresight as to provide for the production of energy and its conservation by food, clothing and shelter.

The original wants of an organism, then, are those of energy-supplying substance, and of stimuli provocative of energy discharge. The wants of the former class can be differentiated to a very slight extent only. Those of the latter class can be varied indefinitely. The multiplication of wants and of satisfactions is mainly a multiplication of activities and of stimuli.

How are the satisfactions of each class provided? There is a large number of life-sustaining substances, and there are many stimuli of activity, which not only are not produced by industry, but which are not even obtained through intent, or by effort. They are put in the way of the creatures that enjoy them, and are absorbed or reacted upon as a matter of course. The lowest organisms are wholly dependent upon such resources, and the highest, including human beings, are still dependent upon them largely. Sunshine and air we accept without a thought of what it would mean to have to get them by effort. The infinitely varied stimuli which create our pleasurable sensations in the presence of nature, and the ideas of nature that are slowly organized in scientific knowledge, are all a part of nature's unsolicited bounty. The economy which utilizes them is purely biological and psychological, but it may be of any stage, from the merely organic economy to the rational.

By the normal evolution of the organism further objective satisfactions, belonging to the class stimuli, are provided; in the lower

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forms of life without conscious effort, but among human beings with more or less of forethought, and at much cost in economic sacrifice. These are offspring and fellow-beings, with all their potentialities of sympathy and of rivalry, of social intercourse and of coöperation.

A third mass of satisfactions is obtained through a measure of effort, which, however, consists simply in finding and taking possession of what nature provides. It is made up of those food supplies that are the dependence of most of the higher animals and of primitive man, and of various materials which both animals and men use for nests or shelter, and men for clothing. To a much greater extent than we realize the human race still subsists by foraging rather than by producing. We consume great quantities of wild fruits and of game, of medicinal barks and herbs, of furs and feathers which are merely gathered, and are not increased in supply by any process of breeding or cultivating. In a large measure our so-called extractive industries are merely survivals of a primitive foraging economy. Lumbering by the usual wasteful methods is a conspicuous example of it.

There is a fourth array of satisfactions, consisting substantially of stimuli of bodily and mental activities, intellectual and emotional, which are enjoyed only by man, and the origins of which we have been describing. All have sprung from the mimetic faculty. Originally developed with the intent to multiply food supplies, they become important to man for the sustenance of mind and soul rather than of body. Language and manners, plastic and poetic arts, amusements and worship — these involve productive intent and effort, and in the beginning they are regarded as productive means, as truly as capital is in modern days. Nevertheless, they are in reality productive of subjective satisfaction, rather than of material goods, and so are not properly to be classed as agents of a productive economy.

The fifth and final array of satisfactions is that which is created by modern productive industry. It comprises the great bulk of our food supplies, and of our clothing, comforts and luxuries; and their creation involves the production also of great quantities of auxiliary goods, including tools and machinery and means of transportation.

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All of these satisfactions save those of the last division named, are an inheritance from an almost immeasurable past. Are there any categories of economic science which apply to the products of that "preliminary age," as Bagehot called it, no less than to the wealth of our modern world? The answer has already been given by implication in what has been said of the functions of reproduction and of culture in differentiating both wants and their satisfactions. The numerical increase of a species raises the life of each individual to a higher power by multiplying a thousand fold the stimuli of activity. Cultural products raise it to yet higher powers both by diversifying its material basis of subsistence, and by almost infinitely multiplying its interests.

Now just to the extent that men have a wide variety of material satisfactions, and that their interests are multiplied by innumerable stimuli of activity, they have a relatively high standard of living. That the standard of living is a complex of cultural facts hardly needs demonstration. What men desire and expect in life is an epitome of their race history in social intercourse, manners, art, amusements and religion. Here, then, in identifying the preliminary economies with the evolution of a standard of living we bring them within the scope of familiar economic concepts. A phenomenon of the diversification of wants and satisfactions, the standard of living is a fact not of production primarily, but of consumption. Thus we arrive at the broad economic significance of culture. The evolution of culture is the evolution of a consumption economy.

The classical economists recognized a department of their science which they called the consumption of wealth; but they never knew what to make of it. Accepting the self-luminous proposition that wealth can not be consumed until it is obtained, they touch upon consumption, if at all, at the end of their exposition, and only so far as to show how the consumption of wealth reacts upon its increase. This fact ought to have disclosed to them the causal relation of consumption to production. Jevons and the Austrians perceived the psychological aspect of it, and by deriving from the facts of consumption the marginal theory of utility and value, they reorganized economic theory. Marshall, broadening the treatment, identifies the theory of consumption

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with the theory of demand, and places it before the theory of supply, that is, of production.

The whole truth of the matter, however, is that the phenomena of consumption are not only psychologically antecedent to the phenomena of production, as motive to deed, but, as we have seen, they are also historically antecedent. For ages there was consumption before there was any production, and without grasping that fact man's economic and social history is not to be understood. Like the lower animals he depended for supplies upon the proffered bounty of nature. His only business was to consume what she gave. His ideas and habits of consumption, therefore, were his original economy. There was, in short, a consumption economy long before there was a production economy.

And that is not all. When man became convinced that he must do something to increase the supplies that nature offered, he knew nothing of industrial methods. He did not even suspect the importance of differentiating his consumption. But in trying to wheedle food from the powers of earth and air, through a crude animistic practice of magical rite and religious ceremony, he did vary his consumption in fact, and differentiation once begun was bound to continue until it became a great multiplication of wants. The immediate effect of differentiation was to establish a conservative and relatively advantageous use of the environment. Here again history confirms theory. All modern economists recognize the indebtedness of their science to Professor Patten's studies of the relation of a diversified consumption to marginal utility and to the total supply of goods. Diversified consumption does not soon encounter diminishing returns. It is the simplest way to ameliorate economic conditions, and it was the primitive way.

Differentiation begins with the multiplication of organisms and the evolution of their relations to one another. It begins, in short, in social needs and satisfactions. In relations with offspring and other fellow-creatures we have the first new forms of energy-expenditure which have been referred to as correlative with the need for energy-supplying substances. In the relation of the individual to his fellows we have the stimuli which first expand his consumption.

From the activities born of social relations are presently de-

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veloped the activities of culture; for mimicry is a social product; and from mimicry, as we have seen, language and all the arts are descended. Culture in turn, in its economic aspect, is nothing more or less than the diversification of consumption. It is the expansion and perfection of the consumption economy.

But we have not yet exhausted the possibilities of the consumption economy so nearly identical with culture. It is through the diversification of consumption that man passes over into a production economy, and it is in the standard of living, created and measured by the diversification of culture, that we have the efficient cause of the modern production of wealth.

Through using a large number of nature's freely offered goods in new and varied ways, man slowly discerns the possibilities that lie in the cultivation of roots and grains, the breeding of animals, the development of instinctive arts into rude manufactures, and finally exchange. Perhaps we can not trace all the steps by which magical mummeries became agriculture and herding, and imitations of natural objects for purposes of incantation or enchantment became practical utensils or beautiful adornments, but there is no doubt that for ages the practical was not yet separated from the animistic and ceremonial. And without attempting to explain just how exchange began, we can say that one of its earliest forms was a give and take between the community and its protecting powers. The ceremonial rites of magic and religion make over to the unseen deities certain gifts and services, and man expects to be rewarded therefore by a relative abundance. This exchange has in it also the germ of the idea of capital. Closely connected with such ceremonies are those of propitiation between man and man, whereby the various products found in the foraging of many individuals, families and hordes, being ceremonially passed from one to another, in the course of time are passed for the sake of a varied consumption, until the whole affair becomes a trade, and exchange is seen to be a means of producing a greater sum total of satisfactions.

In the question whether the standard of living determines industrial production, or industrial production determines the standard of living, we come back to close quarters with the whole issue over the economic interpretation of history. If the stand-

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ard of living determines production, then the "interpretation of history" runs back into that early economy which survives as culture. Men can not have more to eat and to wear, or better houses or bigger churches, or handsomer theatres and clubs, or choicer books and pictures, or indulge in more music or travel than they can produce or find the means to pay for; but neither can they produce given quantities of these things unless they desire them strongly enough to put forth necessary exertion, to make necessary sacrifices, to undergo miscellaneous hardships, and to keep their minds alert enough to bring them all to completion. In a word, the standard of living is not the sum and substance of what a population actually has. It is literally what the word means — the standard, the ideal of comfort and luxury which a class or people is striving to realize; not its day-dream of what some fairy godmother might provide, but its sober estimate of what it believes to be possible, and is determined by all reasonable effort to try to secure. So defined and understood, the standard of living is beyond question the cause and not the effect of production.

We may now summarize our results to this point. The organic, instinctive and ceremonial economies, of the world of vegetation, of animal life and of primitive man, are all parts of a consumption economy which is antecedent historically as well as psychologically to the production economy of the modern world. The consumption economy increases well-being not by producing goods through cultivation, breeding or manufacture, but by so diversifying wants and satisfactions that the adaptation of organism and environment is wider in its basis and more stable than it can be when consumption is simple. The diversification of wants and satisfactions begins in the multiplication of organisms through reproduction, and in the evolution of social relations. It is continued and perfected by the evolution of culture, which springs from the mimetic faculty. The consumption economy, by thus determining habits and motives, creates the standard of living, and the standard of living in turn, when mental evolution has achieved the transition to a productive economy, determines the extent of wealth production.

Certain further facts may now be conceded, and we are then in

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a position to comprehend the full economic significance of culture, because the successive steps of economic causation in history will appear in their genetic order. Accepting as true that theory of distribution which accounts for the share of each productive factor by its marginal productivity, and, in like manner, for the share of each component part of a productive faetor, — for example, a particular group of laborers, — it is clear that the social distribution of wealth is determined by the productive power of the various groups and classes in the population. This productive power is in turn determined, so far as causation lies in motive, by the standard of living of the producing groups, and so far as it lies in ability, by their bodily power, moral equipment, mental discipline and acquisitions. Normally these factors are correlated, and all in a large sense are products of culture. They are, in a word, the cultural equipment of the respective groups. Chiefly important is the extent to which primitive animistic conceptions have been superseded by scientific knowledge.

The social distribution of wealth, it may be admitted, has been shown by Marx, Loria and others to be a true cause of changes in social morals and in law, while these in turn, involving as they do the conceptions of rights and liberties, are true causes of changes in political organization and policy.

Therefore, still more briefly stated, our conclusion is: A consumption economy, the chief factors in which are social relations and their great objective product, culture, creates presently a productive economy and the beginnings of morals, law and government, and it continues to determine the scope of the productive economy, while the latter, once in full operation, determines the further evolution of morals, law and politics. Let us then have an economic interpretation of history, provided we know what we are talking about. An interpretation in terms of those ideas and practices which are the subject-matter of economic science, as the term is ordinarily understood, will carry us but a very little way. To get back to the beginnings of the historical process and to true causes, we must go deep into the origins of the consumption economy, and follow its evolution through the unfolding of culture.

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STATE CONTROL OF TRUSTS.[1]

TRUSTS continue to limit production and fix prices in spite of restrictive laws in more than thirty states. This failure of state laws must be due to lack of constitutional power, or to neglect in the exercise of a power that exists. Prohibitions and penalties in these laws have thus far been aimed almost exclusively against agreements between independent persons or corporations to regulate production, supply or prices. Meantime the right of corporations to purchase and hold property in any or all of the states has been little if at all reduced.

Two or more corporations engaged in the same line of manufacture in a single state may not, under some laws, make an agreement to regulate operations and prices. But a third corporation may in most, if not in all, the states purchase the entire plants of the competing corporations, and thus by indirect means effect complete control over their products. Moreover, the validity of this transaction remains the same though the stockholders of the two competing corporations unite to form the purchasing corporation. Thus, though the state law forbids these stockholders to combine in one way, it gives them a corporate charter for the express purpose of combination in another way. Such operations are not even limited by state lines. A corporation chartered in only one state, and therefore foreign to every other state, is permitted by present laws to purchase and hold all the manufacturing plants of any particular kind in the United States. Having purchased all or a majority of the plants that produce commodities of a certain kind, the trust — that is, the corporation foreign to all the states save one — is obviously able to control the supply and prices of these commodities. In this way and by these means industrial trusts are formed and maintained.

The United States Census of 1900[2] records the operations of 185 industrial combinations or trusts that control 2,216 plants located in forty-two states and territories. Each of these trusts

[1] Copyright, 1903, by Alton D. Adams.

[2] Vol. VII, p. lxxv.

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is a corporation chartered by one state in order to purchase the formerly competing plants which it now holds in many states. The entire structure of trusts is thus founded on and supported by state laws. First comes the corporate charter granted by one state, and second and equally important are the laws of all the other states that permit the foreign corporation to purchase and operate plants within their respective limits. Without the right to own and operate manufacturing plants, mines and forests in other states, a corporate charter from any one state would be useless for trust purposes. Each state now supports and protects foreign corporations in monopoly ownership of the instruments of production in certain lines within its territory. As long as there is monopoly ownership of factories, there cannot be competitive prices for their products.

If the states are to control trusts, the power of foreign corporations to own forests, mines and factories in all the states must either be destroyed or be made subject to burdens that materially limit its exercise. The ability of the states to control trusts thus depends on the power of each state to regulate or prohibit the ownership by foreign corporations of mines, forests and factories within its limits. Such power as a state has in this respect depends in large measure on the nature of a corporate charter. In Head & Amory *v.* The Providence Insurance Company,[1] Chief Justice Marshall, referring to the corporation, said:

> It may correctly be said to be precisely what the incorporating act has made it; to derive all its powers from that act, and to be capable of exerting its faculties only in the manner which that act authorizes.

In Paul *v.* Virginia,[2] where the rights of a foreign corporation were under consideration, the Supreme Court said:

> Now, a grant of corporate existence is a grant of special privileges to the corporators, enabling them to act for certain designated purposes as a single individual, and exempting them (unless otherwise specially provided) from individual liability. The corporation, being the mere creation of local law, can have no legal existence beyond the limits of the sovereignty where created.

[1] 2 Cranch, 127. [2] 8 Wallace (U. S.), 168.

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Speaking again of the nature of a corporation, in Providence Bank *v.* Billings,[1] Chief Justice Marshall said: "The great object of a corporation is to bestow the character and properties of individuality on a collective and changing body of men." Assertion of the fact that a corporate charter is simply a privilege granted by and dependent on the law of some particular state is found in later as well as earlier decisions of the Supreme Court. A statute of Pennsylvania that imposed an annual license fee on certain foreign corporations was contested in Pembina Milling and Mining Co. *v.* Pennsylvania,[2] decided in 1887. In the course of its opinion sustaining the validity of this statute the Supreme Court said:

> Such corporations are merely associations of individuals united for a special purpose, and permitted to do business under a particular name and have a succession of members without dissolution.

Again, in Horn Silver Mining Company *v.* New York State,[3] decided in 1892, Mr. Justice Field said, in delivering the opinion of the court:

> A corporation being the mere creature of the legislature, its rights, privileges and powers are dependent solely upon the terms of its charter. Its creation (except where the corporation is sole) is the investing of two or more persons with the capacity to act as a single individual with a common name, and the privilege of succession in its members without dissolution, and with a limited individual liability.

With these expressions as to corporations, running through the opinions of the court for more than half a century, it is easy to understand the meaning of statements like that of Chief Justice Marshall, in Dartmouth College *v.* Woodward,[4] where he said that "a corporation is an artificial being, invisible, intangible, and existing only in contemplation of law." A being that exists "only in contemplation of law" does not exist in fact at all, but is simply a convenient designation for the "grant of special privileges to the corporators," by which one, two, or more persons are enabled to act in a certain way under a particular name and

[1] 4 Peters, 514, 562.
[2] 25 U.S., 181.
[3] 143 U. S., 305.
[4] 4 Wheaton, 636.

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with "limited individual liability." Legislatures may confer whatever special rights and privileges they will on certain natural persons, and give these rights and privileges whatever names they choose. After the christening is over, however, there will remain only the natural persons with their newly acquired rights, the names of these rights, and nothing more. No legislative fiat can increase the number of real persons or objective things

Since a corporation is merely the name given to a bundle of rights or special privileges that may be conferred on one or more persons, the corporate privileges can be enjoyed only where the law of their creation is in force, or where some other law permits. In Bank of Augusta *v.* Earl,[1] decided in 1839, the question whether a Georgia corporation had the right to do business in Alabama arose between the bank and a citizen of the latter state. Chief Justice Taney, speaking for the Supreme Court, said:

> It exists only in contemplation of law, and by force of law; and where that law ceases to operate, and is no longer obligatory, the corporation can have no existence. It must dwell in the place of its creation, and cannot migrate to another sovereignty. . . . We think it well settled, that by the law of comity among nations, a corporation created by one sovereignty is permitted to make contracts in another, and to sue in its courts. . . . But we have already said that this comity is presumed from the silent acquiescence of the state. Whenever a state sufficiently indicates that contracts which derive their validity from its comity are repugnant to its policy, or are considered as injurious to its interests, the presumption in favor of its adoption can no longer be made.

An act passed by the Virginia legislature, in 1866, provided that no foreign insurance company should do business within the state until it had deposited bonds of a certain character with the state treasurer. One Samuel Paul violated the provisions of this act by doing business as agent for insurance companies incorporated in the State of New York, without having deposited the required bonds. Paul was tried, convicted and fined by the Virginia courts, and he then brought his case to the United States Supreme Court on the ground that the act of Virginia relative to

[1] 13 Peters (U. S.), 519.

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foreign insurance companies was in conflict with that clause of the federal Constitution which provides that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states." [1] The decision in this case, Paul *v.* Virginia [2] above named, supported the validity of the state law. Referring to the clause of the Constitution just quoted, the Supreme Court said:

> The answer which readily occurs to the objection founded upon the first clause consists in the fact that corporations are not citizens within its meaning. The term citizens, as there used, applies only to natural persons, members of the body politic, owing allegiance to the state, not to artificial persons created by the legislature, and possessing only the attributes which the legislature has prescribed. . . . Special privileges enjoyed by citizens in their own states are not secured in other states by this provision. It was not intended by the provision to give the laws of one state any operation in other states. They can have no such operation, except by the permission, express or implied, of those states. The special privileges which they confer must, therefore, be enjoyed at home, unless the assent of other states to their enjoyment therein be given. . . . The recognition of its existence even by other states, and the enforcement of its contracts made therein, depend purely upon the comity of those states, — a comity which is never extended where the existence of the corporation or the exercise of its powers are prejudicial to their interests or repugnant to their policy. Having no absolute right of recognition in other states, but depending for such recognition and the enforcement of its contracts upon their assent, it follows, as a matter of course, that such assent may be granted upon such terms and conditions as those states may think proper to impose. They may exclude the foreign corporation entirely; they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with other citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion. . . . If, on the other hand, the provision of the Constitution could be construed to secure to citizens of each state in other states the peculiar privileges conferred by their laws, an extra-territorial operation would be given to local legislation utterly destructive of the independence and the harmony of the states.

[1] Art. IV, 2, 1. [2] 8 Wallace, 168.

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The foregoing decision thus clearly holds that corporate rights are simply the special rights of certain natural persons acting under the charter, though as a matter of procedure these rights must be asserted in the special name of the charter. But when the natural person goes beyond the jurisdiction of the law by which his special rights are granted, he leaves these rights behind. Were it not for the sophistries that have been built up on the word "corporation," this proposition would be too plain for argument. Thus certain persons may be authorized to practise law or medicine, or sell liquor or engage in the plumbing trade by one state, but this gives them no right to follow these occupations in other states. In Pembina Milling and Mining Company *v.* Pennsylvania,[1] above mentioned, the doctrine of Paul *v.* Virginia was affirmed. In the course of its opinion the Supreme Court said:

Nor does the clause of the Constitution declaring that the "citizens of each state shall be entitled to all privileges and immunities of citizens in the several states" have any bearing upon the question of the validity of the license tax in question. Corporations are not citizens within the meaning of that clause. This was expressly held in Paul *v.* Virginia. . . . In the subsequent case of Ducat *v.* Chicago, 10 Wall., 410, the court followed this decision, and observed that the power of the state to discriminate between her own domestic corporations and those of other states, desirous of transacting business within her jurisdiction, was clearly established by it and the previous case of Augusta *v.* Earle, 13 Pet., 519, and added that "as to the nature or degree of discrimination, it belongs to the state to determine, subject only to such limitations on her sovereignty as may be found in the fundamental law of the Union."

A still later case affirming similar views is that of Horn Silver Mining Company *v.* New York State,[2] where the Supreme Court said:

As to a foreign corporation,— and all corporations in states other than the state of their creation are deemed to be foreign corporations,— it can claim a right to do business in another State, to any extent, only subject to the conditions imposed by its laws. . . . This doctrine has

[1] 125 U. S. 181. [2] 143 U. S., 305.

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been so frequently declared by this court that it must be deemed no longer a matter of discussion, if any question can ever be considered at rest. Only two exceptions or qualifications have been attached to it in all the numerous adjudications in which the subject has been considered, since the judgment of this court was announced more than half a century ago in Bank of Augusta *v.* Earle, 13 Pet., 519. One of these qualifications is that the state cannot exclude from its limits a corporation engaged in interstate or foreign commerce, established by the decision in Pensacola Telegraph Company *v.* Western Union Telegraph Company, 96 U. S., 1, 12. The other limitation on the power of the state is where the corporation is in the employ of the general government.

As it cannot be maintained that industrial trusts are in the employ of the federal government, they cannot claim to monopolize the mines, forests and factories of the several states on that ground. The meaning of government employment is illustrated in Pembina Mining Company *v.* Pennsylvania,[1] where the Supreme Court said:

> And undoubtedly a corporation of one state, employed in the business of the general government, may do such business in other states without obtaining a license from them. Thus, to take an illustration from the opinion of Mr. Justice Bradley in a case recently decided by him, "if Congress should employ a corporation of ship-builders to construct a man-of-war, they would have the right to purchase the necessary timber and iron in any state of the Union," and, we may add, without the permission and against the prohibition of the state.

This same illustration was repeated by the court in Horn Silver Mining Company *v.* New York State.[2] Evidently the ship-building corporation would be able to escape the restrictions of state laws only as to matters involved in its federal employment.

But it may be contended that every corporation sending its goods into different states is engaged in interstate commerce in such a way as to escape regulation or exclusion by any state. This view is not correct, however, as may be seen from Pensacola Telegraph Company *v.* Western Union Telegraph Company,[3]

[1] 125 U. S., 181. [2] 143 U. S., 305. [3] 96 U. S., 1, 12.

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cited by the court above in support of the proposition that a state cannot exclude a corporation engaged in interstate commerce. The case just named, decided in 1877, involved the right of Florida to exclude all telegraph companies except one from certain parts of the state where it had granted a monopoly of the business. In an opinion denying the power of the state to exclude a telegraph company that was authorized by Congress to enter the territory in question, the Supreme Court said:

> The legislation of Florida, if sustained, excludes all commercial intercourse by telegraph between the citizens of the other states and those residing upon this territory, except by the employment of this corporation. The United States cannot communicate with their own officers by telegraph except in the same way. The state, therefore, clearly has attempted to regulate commercial intercourse between its citizens and those of other states, and to control the transmission of all telegraphic correspondence within its own jurisdiction.

The sort of connection with interstate commerce that frees a corporation from state control is further illustrated in Telegraph Company *v.* Texas,[1] decided in 1881, where a state tax on each message sent by the company was contested. In the course of an opinion holding this tax invalid, it was said by the Supreme Court:

> A telegraph company occupies the same relation to commerce as a carrier of messages, that a railroad company does as a carrier of goods. . . . Clearly, if a fixed tax for every two thousand pounds of freight carried is a tax on the freight, or for every measured ton of a vessel a tax on tonnage, or for every passenger carried a tax on the passenger, or for the sale of goods a tax on the goods, this must be a tax on the messages.

There is nothing in the two cases just considered to indicate that foreign corporations whose connection with interstate commerce consists in the sending of goods to different states can demand admission in any state. That a mere manufacturing and trading corporation cannot escape regulation or even exclusion by states to which it is foreign has been decided by the Supreme Court in several instances.

[1] 105 U. S., 460.

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An act of the Pennsylvania legislature, passed in 1879, imposed a license tax on certain foreign corporations that might maintain offices in the state. The Pembina Mining Company secured offices in Philadelphia in 1880, after having been chartered in Colorado to do a general mining business. Subsequently the company contested the office tax on the ground, among others, that it was a regulation of interstate commerce. In deciding the case [1] the Supreme Court said on this point:

> It is not perceived in what way the statute impinges upon the commercial clause of the federal constitution. It imposes no prohibition upon the transportation into Pennsylvania of the products of the corporation, or upon their sale in the commonwealth. It only exacts a license tax from the corporation when it has an office in the commonwealth for the use of its officers, stockholders, agents, or employees. . . . The exaction of a license fee to enable the corporation to have an office for that purpose within the commonwealth is clearly within the competency of its legislature.

After pointing out the exceptions to the rule that a state may regulate or exclude foreign corporations, the court continued:

> These exceptions do not touch the general doctrine declared as to corporations not carrying on foreign or interstate commerce, or not employed by the government. As to these corporations, the doctrine of Paul *v.* Virginia applies. The Colorado corporation does not come within any of the exceptions. Therefore, the recognition of its existence in Pennsylvania, even to the limited extent of allowing it to have an office within its limits for the use of its officers, stockholders, agents, and employees, was a matter dependent on the will of the state. It could make the grant of the privilege conditional upon the payment of a license tax, and fix the sum according to the amount of the authorized capital of the corporation. The absolute power of exclusion includes the right to allow a conditional and restricted exercise of its corporate powers within the state.

A still later case, decided in 1892, shows again that state taxation of a foreign manufacturing and trading corporation is not a regulation of interstate commerce. During the years ending No-

[1] Pembina Mining Co. *v.* Pennsylvania, 125 U. S., 181.

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vember 1, 1881 and 1882, the Horn Silver Mining Company, a Utah corporation, did its financial business and correspondence in New York, and also made up its silver into standard bars there. On May 26, 1881, there was approved a New York statute taxing corporations "organized under any law of the state or of any other state or country, and doing business in the state."

New York brought an action against the corporation to recover taxes under this law, and it was contested on the ground, among others, that the tax in question was a regulation of interstate commerce. In reply to this contention the Supreme Court said:[1]

> The extent of the tax is a matter purely of state regulation, and any interference with it is beyond the jurisdiction of this court. The objection that it operates as a direct interference with interstate commerce we do not think tenable. The tax is not levied upon articles imported, nor is there any impediment to their importation. The products of the mine can be brought into the state and sold there without taxation, and they can be exhibited there for sale in any office or building obtained for that purpose; the tax is levied only upon the franchise or business of the company.

The distinction between a manufacturing and trading corporation and a common carrier, as to interstate commerce, is even more clearly stated by the court in New York State *v.* Roberts,[2] decided in October, 1898. This case arose under a statute that taxed corporations in New York on the basis of their capital employed within that state, if they carried on manufacturing operations in any other state. A Michigan corporation, with its main factory in that state, conducted the business of importing and selling goods at New York City. Business fixtures valued at $15,000 were used at New York City, a stock of goods from Michigan valued at $50,000 was regularly carried there, and $23,000 to $62,000 was employed yearly in the purchase of drugs. The tax for the Michigan corporation in New York was based on $90,000, but it was contended that this should be reduced to $15,000, the value of the fixtures, and that the tax laid was a regulation of interstate commerce.

[1] Horn Silver Mining Co. *v.* New York, 143 U. S., 305.
[2] 171 U. S., 658.

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Justice Shiras delivered the opinion of the court upholding the tax as laid, and said in part:

Here no tax is sought to be imposed directly on imported articles, or on their sale. This is a tax imposed on the business of a corporation, consisting in the storage and distribution of various kinds of goods, some products of their own manufacture, and some imported articles. From the very nature of the tax, being laid as a tax upon the franchise of doing business as a corporation, it cannot be affected in any way by the character of the property in which its capital stock is invested. . . . When a corporation of one state, whose business is that of a common carrier, transacts part of that business in other states, difficult questions have arisen, and this court has been called upon to decide whether certain taxing laws of the respective states infringe upon the freedom of interstate commerce. . . . It is not necessary in this case to enter into a subject so difficult, but the cases are referred to as showing the distinction between corporations organized to carry on interstate commerce, and having a quasi-public character, and corporations organized to conduct strictly private business. The corporation concerned in the present litigation is of the latter character, and the case comes within the doctrine of Paul *v.* Virginia, 8 Wall., 168, and of subsequent cases affirming that one.

Justices Harlan and Brown dissented on the ground that the tax was a regulation of interstate commerce.

Evidently, the refusal by a state of the right of foreign corporations to own factories within its limits is not a regulation of interstate commerce, since even the right to do business in the corporate name or have an office there may be denied or taxed.

It has been contended, however, that exclusion or special taxation of foreign corporations by a state violates the fourteenth amendment of the federal constitution by denying equal protection of the laws to all persons within its jurisdiction. In Pembina Mining and Milling Company *v.* Pennsylvania,[1] this contention was thus answered by the Supreme Court:

The plaintiff in error is not a corporation within the jurisdiction of Pennsylvania. The office it hires is within such jurisdiction, and on condition that it pays the required license tax it can claim the same

[1] 125 U. S., 181.

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protection in the use of the office that any other corporation having a similar office may claim. It would then have the equal protection of the law so far as it had anything within the jurisdiction of the state, and the constitutional amendment requires nothing more. The state is not prohibited from discriminating in the privileges it may grant to foreign corporations as a condition of their doing business or hiring offices within its limits, provided always such discrimination does not interfere with any transaction by such corporations of interstate or foreign commerce. It is not every corporation, lawful in the state of its creation, that other states may be willing to admit within their jurisdiction or consent that it have offices in them; such, for example, as a corporation for lotteries. And even where the business of a foreign corporation is not unlawful in other states, the latter may wish to limit the number of such corporations, or to subject their business to such control as would be in accordance with the policy governing domestic corporations of a similar character. The states may, therefore, require, for the admission within their limits of the corporations of other states, or of any number of them, such conditions as they may choose, without acting in conflict with the concluding provision of the first section of the Fourteenth Amendment.

It should be noted that the quotation just made is in the main of full judicial force, and not mere dicta, because the Pennsylvania statute applied to foreign but not to domestic corporations, and also to only that class of foreign corporations "that does not invest and use its capital in the Commonwealth."

In a previous case, Philadelphia Fire Association *v.* New York,[1] decided after the adoption of the Fourteenth Amendment, the Supreme Court sustained a New York statute that discriminated against Pennsylvania corporations. Again, in Hooper *v.* California,[2] the Supreme Court held that a statute of the latter state discriminating against foreign insurance companies was valid. A statute of Tennessee provided that residents of that state should have their claims satisfied from the assets of insolvent foreign corporations doing business there before debts due to residents of other states were paid. In Blake *v.* McClung,[3] decided in 1898, the Tennessee statute was held to be void as to citizens of other states, but valid as to foreign corporations not within the juris-

[1] 119 U. S., 110, 120. [2] 155 U. S., 652. [3] 172 U. S., 239.

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diction of Tennessee. Replying to the contention that a certain Virginia corporation in this case was denied equal protection of the laws, the Supreme Court said:

> A corporation not created by Tennessee, nor doing business there under conditions that subjected it to process issuing from the courts of Tennessee at the instance of suitors, is not, under the above clause of the Fourteenth Amendment, within the jurisdiction of that state.

On the foregoing authorities it is clear that manufacturing and trading corporations may be entirely excluded from a state where they are foreign, or may be admitted under such discriminating laws as the state may elect. It is thus easy for a state to prevent monopoly ownership of its mines, forests and factories by a trust that has not yet come under its jurisdiction. As the greater part of the factories in many important lines of industry throughout the United States are already owned by trusts, effective regulation by the several states must be applied to foreign corporations already within their jurisdiction.

When a foreign corporation has been admitted to a state, and has purchased many or all of the factories of a certain sort therein, can the state break up this monopoly ownership of its factories? In other words, after a state has licensed a foreign corporation to do business within its limits and the corporation has acted on the license, can the state increase the burdens incident to the license, or even force the foreign corporation to retire from the state? If the state can do neither of these things, existing trusts are safe in their monopolies. Unless a foreign corporation has obtained from a state a license to do business within its limits for a definite period and for a valuable consideration, it seems clear that there is no contract with the state. Even where such a contract has been entered into, it might not protect the foreign corporation from an increase in the license tax, unless this tax was fixed by the contract, and so of other laws unfavorable to the foreign corporation.

In Horn Silver Mining Company *v.* New York,[1] it was shown that the company had been admitted and did business in the state during at least one year prior to November 1, 1881, while

[1] 143 U. S., 305.

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the law under which it was taxed was enacted May 26, 1881, after the admission of the foreign corporation. This tax was held valid in spite of the contention that it violated the Fourteenth Amendment, and the Supreme Court said on this point:

> There can be, therefore, no possible objection to the validity of the tax prescribed by the statute of New York, so far as it relates to its own corporations. Nor can there be any greater objection to a similar tax upon a foreign corporation doing business by its permission within the state.

A similar result as to the right of a state to increase the burdens and cut down the rights of foreign corporations that had previously been admitted within its limits was reached in Orient Insurance Company *v.* Daggs.[1] In that case a Missouri statute of 1889 which related to the liability of fire insurance companies was under consideration. The statute provided that "in case of total loss of the property insured, the measure of damages shall be the amount for which the same was insured." The Orient Insurance Company had been doing business in the state since June, 1873, long before the passage of the law in question. In a suit by Daggs in the state court to recover the entire amount for which property that had been destroyed by fire was insured, it was shown that the actual value of the property was much less than the amount of insurance, but the court awarded damages for the sum named in the policy. In the case above named, the insurance company appealed to the Supreme Court on the ground that its property rights were violated by the act in question. Replying to this contention the court said:

> It cannot be successfully contended that the state may not prescribe the liabilities under which corporations chartered by its laws shall conduct their business in the future, where no limitation is placed upon its power in this respect by their charters. Legislation to this effect is found in the statute-books of every state. That which a state may do with corporations of its own creation it may do with foreign corporations admitted into the state.

The contract of insurance in this case, dated June, 1893, provided that "said insurance company shall not be liable beyond

[1] 172 U. S., 557.

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the actual cash value of the property at the time the loss or damage occurs." In spite of this contract, the Supreme Court supported the right of Daggs to recover $800, the amount named in the policy, though the barn insured was shown to be worth only $100. Clearly a right of contract, which the insurance company had from the time it entered the state, in 1873, up to the time when the act of 1889 went into effect, was taken away by that statute.

A further illustration of the power of a state to increase the burden of conditions under which a foreign corporation, previously admitted, may continue to do business within its limits is supplied by Bedford *v.* Eastern Building and Loan Association,[1] which involved the validity of a statute of Tennessee that required a large deposit of security by such foreign associations doing business in the state. The statute was held to be void in so far as it operated to prevent the completion of contracts already entered into by an association of this sort, but the court remarked that as to new business the association could either comply with the requirements of the statute or else get out of the state.

That a state may absolutely exclude a foreign corporation that has previously been licensed to do business within its limits and has invested large sums on the faith of this license, is clearly shown by the leading case of Doyle *v.* Continental Insurance Company,[2] decided by the Supreme Court in 1876. This case was the closing chapter in a notable bit of history. By an act of March 4, 1870, the legislature of Wisconsin required all foreign insurance companies wishing to do business in that state to obtain a license from the state treasurer and to agree not to remove any suits brought against them from the state to the federal courts. Prior to the passage of this act the Continental Insurance Company, a Connecticut corporation, was regularly engaged in business in Wisconsin, and this corporation subsequently procured the required license and signed the agreement not to remove suits from the state to federal courts. At a later date the insurance company removed a suit brought against it in the Wisconsin court to the federal courts, but the suit went on through

[1] 181 U. S., 227. [2] 94 U. S., 535.

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the state courts and judgment was recovered there against the company on the ground in part that the right of removal was lost by the agreement not to remove. On appeal to the United States Supreme Court, the judgment of the Wisconsin courts was reversed, the former court holding that the statute of Wisconsin was unconstitutional in so far as it obstructed removal of suits to the federal courts, and that the agreement by the company not to remove was void. This result was reached in the case of Insurance Company *v.* Moore.[1] Being again sued in the state court by one Drake, the company again removed its case to the federal court, in 1875. Thereupon Drake applied to Doyle, secretary of state for Wisconsin, to revoke the license of the company to do business in the state, as provided by the statute of 1870. On these facts the insurance company applied to the circuit court of the United States for an injunction to forbid the revocation of the license by Doyle, and this injunction was granted. Thereupon Doyle appealed to the United States Supreme Court. It was contended for the insurance company that it had been admitted and had expended large sums to perfect its business organization in Wisconsin before the act of 1870 was passed; that a license had been granted to the company under this act; and that, the provisions of the act as to non-removal of suits to the federal courts and the agreement not to remove being void, as previously decided, the company could not be excluded from the state because it had violated a void act. It was further averred on the part of the company that it would suffer great loss and that its property rights would be violated if its license to do business in the state should be revoked. While considering these allegations in Doyle *v.* Continental Insurance Company,[2] the Supreme Court affirmed its previous decision in Insurance Company *v.* Moore, holding the Wisconsin statute void as to the removal of suits and likewise the agreement under it. In the course of its opinion the court further said:

> The correlative power to revoke or recall a permission is a necessary consequence of the main power. A mere license by a state is always revocable. . . . The power to revoke can only be restrained, if at

[1] 20 Wallace, 445. [2] 94 U. S., 535.

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all, by an explicit contract upon good consideration to that effect. . . . A license to a foreign corporation to enter a state does not involve a permanent right to remain, subject to the laws and Constitution of the United States. Full power and control over its territories, its citizens, and its business belong to the state. . . . The argument that the revocation in question is made for an unconstitutional reason cannot be sustained. The suggestion confounds an act with an emotion, or a mental proceeding, which is not the subject of inquiry in determining the validity of a statute. An unconstitutional reason or intention is an impracticable suggestion, which cannot be applied to the affairs of life. If the act done by the state is legal, is not in violation of the Constitution or laws of the United States, it is quite out of the power of any court to inquire what was the intention of those who enacted the law. . . . No right of the complainant under the laws or Constitution of the United States, by its exclusion from the state, is infringed; and this is what the state now accomplishes. There is nothing, therefore, that will justify the interference of this court.

The bill requesting an injunction to prevent the revocation of the license was dismissed.

With ample power to refuse admission to foreign corporations and to expel them from its territory after they have been admitted, a state may maintain production on a competitive basis within its limits. A foreign corporation owning plants of a particular character in other states may be denied the right to purchase such factories in any given state, or to continue in their ownership or operation there even after their purchase. Or, if absolute exclusion seems too radical, a heavy special tax may be laid by any state on each foreign corporation owning mines, forests or factories within its limits, and also similar mines, forests or factories in other states. The result of such taxes would be to bring the mines, forests or factories rapidly back into the hands of independent operators. If only a single state adopts this course, it may be unprofitable for independent producers to operate factories there of the sort owned in other states by a trust, because the trust products may come from other states and be sold below cost in the state from which it had been excluded. It seems probable, however, that the people of any state could stand prices below cost for trust products as long as the trust

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cared to sell on that basis. If the power of foreign corporations to monopolize the instruments of production in all the states is destroyed, it may be suggested that a monopoly can be reached by some manipulation of the stocks of domestic corporations, or by the conveyance of property to trustees. When such methods are adopted, however, it may be safely assumed that the power of the state will be ample to deal with them. At present the foreign corporation is the strongest tool of monopoly. It is idle to say that other states are at the mercy of the few that are bartering corporate licenses for a fraction of monopoly gains, for any state may refuse the exercise of these licenses within its limits. Unless states do this, monopolies of the instruments of production will continue to displace competitive prices. There cannot be competition among supplies from factories under common ownership. If competition is not maintained, the alternative is state regulation of prices or full state ownership. At the present time the United States is moving rapidly toward the former if not the latter of these two.

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TWO NEW SOUTHERN CONSTITUTIONS.

WITHIN the last two years two more steps have been taken in the counter-revolution which the Southern States are conducting against the Republican reconstruction measures of the sixties and early seventies. Alabama and Virginia have adopted new constitutional provisions for the exclusion of negroes from participation in politics. By these acts the number of states that have engaged in this policy has been raised to seven: Mississippi pointed the way in 1890, South Carolina followed the lead in 1895, Louisiana came in 1898, North Carolina in 1900, Maryland in 1901, and now Alabama and Virginia have joined their sister states. In one case only, North Carolina, has the change in the voting class been accomplished by a mere amendment of the existing constitution on the specific point concerned; in Maryland it was brought about by an act of the legislature, while in each of the other five states it has been an incident in a general and far-reaching revision of the constitution by a special convention. The proceedings of these conventions, therefore, reveal not only the reasons for Negro disfranchisement, but also the general trend of constitutional ideas in the respective states. It is aimed in the following sketch to give a summary view of the principal features of the new Alabama and Virginia constitutions.[1]

I.

The Alabama convention, under an act of December 11, 1900, met at Montgomery on May 21, 1901. It was composed of 155

[1] The principal sources for this paper are the files of newspapers in Montgomery and Richmond. The Alabama convention made an arrangement by means of which a verbatim report of its proceedings was published daily in the Montgomery *Advertiser;* and the Virginia convention entered into a similar agreement with the Richmond *Dispatch*.

[2] The convention was made up of four members from the state at large; two from each congressional district (9 districts); one from each state senatorial district (33); and one from each representative district (100). A prominent newspaper asserted that this elaborate organization was created to give young Democratic aspirants for office some political experience. (Montgomery *Advertiser*, July 7, 1901, p. 4.) Acts of Alabama, 1900-01, pp. 224-234.

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delegates,[2] of whom 141 were recognized by the Democratic caucus as regular Democrats and fourteen were Republican or Populist opponents. The convention included two former governors of the state, two former chief justices of the state supreme court, one member of the constitutional convention of 1865, three members of the convention of 1875, the chairman of the Democratic state committee, a former president of the University of Alabama, four newspaper men, three physicians, six bankers, one schoolteacher, one civil engineer, one mechanic, ninety-six lawyers,[1] and a small minority of planters and merchants. Of those who were old enough for military service at the time of the Civil War, almost every one had served in the Confederate army. Some of the strongest lawyers of the state were in the convention, but the presence of many younger members of the bar tended often to increase the parliamentary difficulties of the presiding officer. The convention remained in continuous session, with only one week's intermission, from May 21 to September 3, 1901.

The Virginia convention met at Richmond on June 12, 1901, in accordance with the provisions of the act of February 16, 1901, after the people on May 24, 1900, had voted in favor of the calling of a convention. There were 100 members, one from each electoral district of the state house of representatives. Politically, the convention divided into eighty-nine Democrats and eleven Republicans. It contained one former governor, one United States senator, one college president, two clergymen, two journalists, one physician, one superintendent of schools, one civil engineer, and at least forty-two lawyers.[2] The last class was not so strong here as in the Alabama convention, and, relatively, the business men and farmers were more numerous and possessed more influence than in Alabama. The convention continued in session, with many intermissions, from June 12, 1901, to June 26, 1902.

The primary purposes of these two conventions were almost

[1] I have not verified this last number, but it was twice mentioned in the convention proceedings, and there were surely over eighty lawyers, a majority of the convention. (*Advertiser*, June 25, 1901, p. 12; July 30, p. 9.)

[2] The statistics of occupations of all the members have not been available, and therefore the above figures must be taken as minima only.

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identical. It was well recognized in both states that the existing practical disfranchisement of the Negro by means of intimidation and dishonest election methods must give place to a constitutional limitation upon Negro suffrage. But beyond this similarity the tasks of the two conventions were quite diverse. The Democrats of Alabama had seized control of their state government in 1875, and in a convention had changed many of the features of the reconstruction constitution of 1867, providing in the new document for many economies and arranging the machinery of government so that a return of the carpet-baggers to power would do the state little harm. This intermediate step between 1870 and 1900 had not been taken in Virginia, where the reconstruction constitution of 1870 remained in force until the new document went into operation on July 10, 1902. Thus the Virginia convention had to do the work performed in Alabama by two distinct conventions meeting a quarter of a century apart. It must not only disfranchise the Negroes, but must also remove all the obnoxious features of the Underwood constitution,[1] and frame an organic law adapted to the economic needs of the twentieth century.

In another way the work of the Virginia delegates was more difficult than that of the Alabama convention. Alabama, though characterized by greater internal economic diversity than Mississippi or Louisiana, was able, on the whole, to adjust without serious trouble the conflicting interests of her various sections. On the other hand, Virginia's social structure embraces the most varied industries, with strongly opposing economic interests. There are the eastern shore and the coasts of the Chesapeake, interested in fishing, the oyster industry and small farming; there is the "black belt," south of the James River, with its large plantations and over-abundance of Negroes; the large cities near the capes of the Chesapeake furnish another class; back at the base of the mountains, the Piedmont region holds a race of thrifty farmers; and farther to the west, among the mountains, there are mining, lumbering, and allied industries, with many poor laborers,

[1] So called from John C. Underwood, who presided over the convention of 1867–68, which was largely composed of carpet-baggers and Negroes. (Annual Cyclopedia, 1867, p. 763; 1868, p. 758.)

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and, in the upland valleys, poor white farmers upon the sterile mountain lands. To frame or administer a government acceptably to all these varied interests has always been a difficult problem for the statesmen of Virginia. And particularly was it difficult, in the light of the fourteenth and fifteenth amendments to the national constitution, to frame a provision which would disfranchise the Negro, and yet leave open the suffrage to every white man.

These two facts — the necessity for far-reaching constitutional reform and the diversity of sectional interests — account largely for the extreme duration of the Virginia convention. There was another reason as well, however, which was purely a question of parliamentary procedure. In the Alabama convention the reports of committees were received by the convention and read three times, the discussion usually taking place upon the second reading. During the debate, the length of speeches was frequently limited to thirty minutes, sometimes to less, and the previous question could always be moved. In the Virginia convention, which followed the precedent set by earlier conventions of that state, all committee reports [1] were considered in committee of the whole, where speech-making was unlimited and the previous question could not be called for, and were afterward taken up in convention, where the whole discussion might be repeated. This procedure permitted great latitude in debate, which, indeed, may have been necessary owing to the wide diversity of interests; but it led to tiresome repetitions and prolonged the session to an abnormal extent.

Before considering in detail the more important innovations debated by the conventions, attention should be called in passing to the significant omissions by which the evidences of reconstruction influence were removed from the organic law of the two states. The constitutions of 1870 and 1875 respectively contained a number of sections whose sole effect and purpose was to

[1] An exception was made in the case of the suffrage report, which was discussed only before the convention. This report was debated before a conference of Democratic members from three to five times a week from October 8, 1901, to March 7, 1902, and was then considered in daily conferences of those members from March 8 to 28; and on March 31 it was taken up for consideration by the convention.

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declare and emphasize the principles which were embodied in the Congressional policy of reconstruction. These sections disappeared in the new constitutions. In Virginia the convention dropped the declarations that the state would always remain a member of the American nation, that force ought to be used in preserving the Union, that the national constitution and laws were paramount, that slavery should not exist in the state, and that all citizens were entitled to equal civil and political rights;[1] in Alabama, the omissions included the clauses extending state citizenship to all persons born or naturalized in the United States, denying the principle of secession, and prohibiting the placing of educational or property qualifications upon suffrage or office-holding.[2] These provisions, four in the Virginia constitution of 1870, and three in the Alabama one of 1875, were the humble pie forced down the reluctant throats of the defeated Confederates. They have been incorporated in but few of the Northern constitutions,[3] and naturally the Southerner wished to be rid of the evidences of his humiliation.

II.

Looking first at that feature of the work of these conventions which attracted most public attention, we may examine the reasons for Negro disfranchisement as given by the delegates. The most fundamental argument was that drawn from the racial inferiority of the black man and his natural incapacity to perform political duties. This idea — or it might better be termed a feeling or instinct — found expression in words in both conventions, but it was seen, and well proved also, by the fact that not a Negro had been elected to either convention to protect the claims of his race. A few excerpts from the report of the debates will sufficiently illustrate this argument.

[1] Constitution of 1870, Art. I, sec. 2, 3, 19, 20.

[2] Constitution of 1875, Art. I, sec. 2, 35, 38. The denial of the right of secession was stricken out "as having no place in a declaration of rights." (Report of Committee, Montgomery *Advertiser*, June 22, 1901, p. 10.)

[3] See Nevada constitution of 1864, Art. I, sec. 2.

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The disqualifying principle in the Negro race is not color, but character; and the qualifying principle in the white race is not color, but character and mental superiority. . . .

I am willing to treat the colored man, the Negro race, fairly, honestly and all right, and give him his rights; but I am one of those that believe he is incapable of self-government. I believe, sir, that the white race should rule. . . .

I believe, as truly as I believe that I am standing here, that God Almighty intended the Negro to be the servant of the white man. I believe that the Scripture will sustain my position on that question. I know he is inferior to the white man, and I believe that delegates of this convention believe him to be. He knows it himself. . . . I take the position that the exercise of the suffrage was an inherent right with the white man and a privilege with the Negro granted by the white man. . . .

It was said that universal suffrage can safely be given only to the white race; that not race prejudice but actual experience has shown that Negro suffrage leads to intolerable government and political corruption; that the Fifteenth Amendment was wrong in the theory that the races are equal, — a theory which has been disproved since the dawn of history. And one delegate, speaking in favor of requiring the voter to understand the duties of the officer for whom he was voting, said: "A Negro could read and write like a white man, but he could not, to save his life, comprehend or explain, like a white man, the simplest form of civil government." Or, to sum it all up, "the white race must dominate because it is the superior race, and in that domination the negro will find the safest pledge and guarantee of just and impartial administration."

Other speakers claimed that Negro disfranchisement was necessary in order to make permanent the supremacy of the whites. President Knox of the Alabama convention, in assuming the chair, said that the problem of the convention was, "within the limits imposed by the federal constitution, to establish white supremacy in this state." But this statement of the question was not accepted by a large portion of the delegates in both conventions, who held that white supremacy was in no danger, and had not been in danger since the whites had gained control by force or fraud back in the seventies. Said one:

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In the confidence in our race we have not questioned that the white man would rule in Virginia whatever were the conditions of suffrage, and however few might be his numbers.[1]

And again:

There will never come a time in the history of this state when the Anglo-Saxon will again submit to the domination of the black man. No matter what it costs, no matter what the method, this one fact stands out supremely true, — that the Anglo-Saxon race is now and will be forever master wherever it exists.[2]

Admitting the inevitable domination of the Caucasian, the great majority of the two conventions demanded the exclusion of the Negro from political life, in order to raise the standard of state politics. For almost a quarter of a century the whites had controlled elections either by the purchase of Negro votes, by intimidation of the voters, or by refusing to count the Negro votes after they were cast. They were bound to dominate; peaceably and legally if possible, but otherwise by any necessary means, even unlawful and violent. The conventions were called, so it was said, to replace the old force-and-fraud methods by new legal and constitutional provisions for disfranchising the black man. It was again the old problem which our constitutional conventions from the first have faced, — that of giving permanent legal form to existing facts. But in this case the difficulty was immensely increased by the Constitution of the United States, which stood in the way of the direct accomplishment of the end in view. The expressions of this general argument for Negro disfranchisement were so frequent and varied in the two conventions that it is difficult to make a choice of extracts.

The white man must rule, said Senator Daniel, but "we want him to rule in the supremacy of decency and with the association of law and order which will command the respect not only of himself, but of the whole civilized world."[3] Under the Negro and carpet-bagger rule, said ex-Governor Oates of Alabama, the whites of the South were compelled either to leave their homes or to get control of the government. They chose the latter,

[1] Richmond *Dispatch*, April 2, 1902, p. 9.
[2] *Ibid.*, April 3, 1902.
[3] *Ibid.*, April 2, 1902, p. 9.

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since there was no place to which they could emigrate. There were two possible methods of assuming control: one was by force and shotguns, the other was to cheat the blacks.

I was an advocate of the latter because it didn't take life. Now, I never changed votes with my one hand,[1] but I upheld it and counselled it in those who did. I am just as guilty as those who did. . . . Unfortunately, it was a necessity. We could not help ourselves. We had to do it or do worse. But we have gone on from bad to worse until it is a great evil. . . .[2]

Another speaker said: "We are tired of frauds; we are tired of ballot-box stuffing; we are tired of buying Negro votes: but the fraud will never cease until this vote [Negro] is eliminated." In the Virginia convention we find the frankest admissions that "the grossest frauds are committed;" that "the elections in what is known as the black belt are carried by fraud." One member pointed ironically to the fact that the "black belt" counties were the ones which furnished the greatest majorities in favor of the convention and of Negro disfranchisement.

In the Alabama convention the same arguments were heard:

But if we would have white supremacy, we must establish it by law — not by force or fraud. If you teach your boy that it is right to buy a vote, it is an easy step for him to learn to use money to bribe officials or trustees of any class. If you teach your boy that it is right to steal votes, it is an easy step for him to believe that it is right to steal whatever he may need or greatly desire.[3] . . .

We have told the people of Alabama for years that we wanted to disfranchise the Negro. He has been about the ballot box like sheep in the market, for sale and traffic to the highest bidder. The white people who love the ballot . . . want to exercise that great weapon in the defence of things that are right and sacred. We want to take it out of the hands of men whom you can purchase for twenty-five cents and a drink of whiskey. . . . We have pledged ourselves to the white people of Alabama, . . . and here is our registered vow to disfranchise every Negro in the state and not a single white man.[4] . . .

Can any man deny the fact that almost since the adoption of the

[1] The speaker had lost an arm in the Civil War.
[2] Montgomery *Advertiser*, July 25, 1901, p. 9.
[3] *Ibid.*, May 23, 1901, p. 1.
[4] *Ibid.*, July 26, 1901, p. 11.

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Fifteenth Amendment the very immunity which it sought to secure has been annulled by the unanimous voice of the white people of Alabama? Now, that has been done by revolutionary methods, by force and fraud, and, as always happens when those methods are resorted to, other evils have been created. Fraud having become necessary, it has debauched the consciences of our people. It threatens the degeneracy of our descendants, and we feel that we cannot perpetuate our decree of annulment by those methods.[1]

And one more quotation from the Virginia convention is almost pathetic:

The problem is this, — to take this black man out of the suffrage of Virginia as a factor and remove him as a disturbing and demoralizing influence. We do not fear his numbers. We fear his presence. As long as he is in the suffrage with us in any numbers, our curse is still upon us, we will still be in the grasp of moral and intellectual servitude, — servitude to the idea that we cannot think, that we cannot act, with independence on any of the great public questions that confront the citizens of this country, — and he will still be a destroyer of the morality of our political standards, because there will always be a large faction among the white people of Virginia that will continue to justify anything that will keep the black man out and put the white man in political control. . . . I plead for a new emancipation, not now of the black man, but of the white man, whom the black man has enslaved in turn. I plead to you for an opportunity to assert our natural power and natural leadership among the states of this Union. . . .[2]

Turning from the reasons for disfranchisement to the methods for accomplishing it, one is confused by the number and variety of plans proposed. There were at least thirty distinct plans submitted to the Alabama convention and at least forty-nine in the Richmond body. Of these seventy-nine propositions, only one, so far as I am aware, openly expressed its purpose to disfranchise every "Negro, black man, or person of African descent,"[3]

[1] Montgomery *Advertiser*, July 26, 1901, p. 12.

[2] Mr. Thom's speech in Democratic conference, October 2, 3, 4, 1901, printed in Richmond *Dispatch*, April 2, 3, 1902.

[3] Montgomery *Advertiser*, May 31, p. 11. Introduced by Mr. Pettus: "That no Negro, black man, or person of African descent shall be allowed to vote in any federal, state, county or municipal election in the State of Alabama."

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although other resolutions called for the repeal of the fifteenth amendment to the United States constitution.[1] The other resolutions recognized that amendment and aimed by indirect means to exclude the blacks, and let into the suffrage as many whites as possible. In each state, Democratic party conventions had solemnly proclaimed their intention to exclude no white man from the suffrage while disfranchising the blacks;[2] and between the Scylla of these pledges on the one hand, and the Charybdis of the Fourteenth and Fifteenth Amendments on the other, the members were forced to steer their suffrage clause.[3]

The possibility of achieving the desired end lay obviously in the existence of other differences between the two races than the forbidden ones of "race, color or previous condition of servitude." Social and economic distinctions, fortunately for the Southern restrictionists, followed closely along the racial lines, and in this way served as the basis for disfranchising clauses which should not conflict with the letter of the national constitution. Thus almost all of the plans proposed, as one qualification for voting, a long term of residence, naturally bearing more heavily upon the Negroes, whose occupations are relatively less permanent, and habits more shiftless than those of the whites.[4] Practically all the plans favored a poll-tax, although there were divergencies concerning the amount of the tax, and concerning the policy of making the tax cumulative. The lowest amount suggested was fifty cents, and from this the proposals ran up as high as four and five dollars. In many plans the tax was merely payable for the preceding year, but in others it was cumulative, sometimes for a stated term of years, and sometimes for all years

[1] Richmond *Times*, June 21, 1901, p. 1; Montgomery *Advertiser*, June 22, 1901, p. 10.

[2] Richmond *Dispatch*, September 17, 1901, p. 1; Montgomery *Advertiser*, July 24, 1901, p. 9.

[3] Montgomery *Advertiser*, July 24, 1901, p. 9.

[4] As finally adopted, the Virginia constitution required two years residence in the state, one year in the county, city, or town, and thirty days in the precinct (Art. II, sec. 18); and the Alabama clause was identical except that it omitted the city and town from the second term (Art. VIII, sec. 178).

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after the adoption of the constitution.[1] Other plans, like that finally adopted in Virginia, exempted certain classes from the payment of the poll-tax.[2] The poll-tax, like the residence requirement, was designed to take advantage of the obvious economic weakness of the Negro, to whom the amount of a poll-tax was a large sum, and who would, moreover, often disfranchise himself by thoughtlessly omitting to pay his tax at the proper time.

Another suggestion was the property qualification, which was usually linked alternatively with the educational clause. The majority of the whites could register under either one or the other of these clauses, while many Negroes could come in under neither. The amount of property required depended somewhat on the form of the educational or "understanding" clause, and some projects sought by the understanding clause to bring in all the whites, and by the property prerequisite to keep out the blacks. The proposed amounts of property varied from $100 up to $500 (real estate), $1,000, and even $10,000; while there were various alternatives of real and personal estate, and in some cases it was provided that a man might vote if his wife, child or parent held a certain amount of taxable property.[3]

As mentioned above, property was never proposed as an absolute qualification, as had been the case in the early history of our states, but it was made alternative with some other requirement. Thus the proposed $10,000 was alternative with two

[1] As adopted, the Alabama constitution requires a poll-tax of $1.50, to be paid before February as a prerequisite to voting in the following November, and the poll-tax due for every year since 1901 must be paid; but the tax is not collectible by any legal process (Art. VIII, 178, 194).

The permanent provision of the Virginia constitution requires that the poll-tax of $1.50 a year be paid for each of the last three years, at least six months before the election, but veterans of the Civil War are exempted (Art. II sec. 20–22).

[2] Art. II, sec. 22.

[3] Montgomery *Advertiser*, May 29, 1901, p. 9, 11; May 4, 5, 8, 30; Richmond *Dispatch*, June 23, 27, July 3, 9, 17, 23, 24. The temporary plan of Virginia had as one alternative the payment of one dollar taxes a year upon property (Art. II, sec. 19); and another section permitted the legislature to place a property qualification of not more than $250 for electors in any county or municipal subdivision (Art. II, sec. 30) in local elections.

The permanent plan of Alabama had an alternative requiring the holding of forty acres of land or $300 in real or personal property by the elector or his wife Art. II, sec. 181, clause 2).

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other provisions, — that the applicant for registration be foreign-born, or that he be related by consanguinity, not farther removed than the *twentieth degree*, to a voter in any of the states before January 1, 1867.[1] It will be seen at a glance that such a provision would admit practically all of the whites whether of foreign or native parentage, and exclude all the negroes who did not possess $10,000. Many other alternatives to the property qualification were proposed. There were various degrees of education, of understanding, of character, of ancestry, or of industry required. The most common educational requisite was that of reading and writing the state constitution in the English language; but some others were proposed, such as a knowledge of the geography of the state — its counties, rivers, and cities;[2] an understanding of the duties of state officers;[3] ability to interpret the state constitution; or — an ironical proposition by a Republican — ability to read intelligently the Declaration of Independence, the Bill of Rights, the Decalogue, and the Lord's Prayer.[4] The most interesting character provision was the one adopted in the Alabama temporary plan, which, as the only alternative to military service or veteran ancestry, admitted

> all persons who are of good character, and who understand the duties and obligations of citizenship under a republican form of government.[5]

The suggestions for an ancestry provision were as numerous and varied as those for a property qualification. The typical

[1] Montgomery *Advertiser*, June 8, 1901, p. 10.

[2] *Ibid.*, June 6, 1901, p. 11.

[3] Richmond *Dispatch*, September 27, 1901, p. 2.

[4] Richmond *Dispatch*, June 23, 1901, p. 15. The permanent provision of the Alabama constitution requires (1) ability to read the Constitution of the United States and the engaging in some lawful calling for the greater part of the preceding twelve months; *or* (2) the possession by the voter or his wife of forty acres of land or $300 taxable property (Art. VIII, sec. 181).

The temporary clause of the Virginia constitution requires ability to read and explain, or understand and explain, any section of the state constitution, if the person is not a veteran or the son of a veteran or a property-holder paying one dollar taxes a year. The permanent provision requires payment of poll-tax and ability to register in one's own handwriting his name, age, date, and place of birth, residence and occupation for the last two years (Art. II, sec. 19, 20).

[5] Art. VIII, sec. 180, clause 3.

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plan proposed the exemption from the provisions of the property or educational clauses, of veterans of certain wars and their descendants. Thus veterans of the Civil War were exempted by one plan; by another the exemption was extended to veterans of all the wars since the Revolution and their descendants; another enfranchised veterans of any American or *European* war and their descendants; and still other plans limited the exemption of veterans' descendants to a term of years, or to a definite degree of relationship, or extended the exemption to those who had served, or whose ancestors had served, in the militia before a certain time.[1] Following the "grandfather clause" of the constitution of Louisiana, several proposals were made to free from educational or property restrictions those who had voted in any state before a certain date, or the descendants of such voters. The dates given, of course, were those at which negroes were not allowed to vote, and 1850, 1861, and 1867 were all suggested.

We may close this long list of methods proposed for limiting Negro suffrage by the mere mention of some miscellaneous plans, showing originality of conception, if not full practicability. One project provided for the use of special colored ballots by persons who could not fulfil the intelligence requirement, such ballots to count only one-fourth as much as the white ballots.[2] Again, it was proposed to admit to the suffrage a limited propertied class and then permit these to add others to the lists by a majority vote of the registered electors in each locality — a provision which strongly reminds one of the Connecticut custom in colonial days; or, again, to place the general requirements high, and permit the legislature to add others to the lists by name — again recalling New England precedent in the colony franchise in Massachusetts. A very ingenious plan, suggested by a prominent member

[1] The veteran-ancestry feature was incorporated into the temporary registration plan of each of the new constitutions. The Alabama plan provided that any person who had served in any war of the United States since 1812, or in the Confederate army or the army of Alabama, or whose ancestor had so served, was entitled to registration before December 20, 1902 (Art. VIII, sec. 180). The Virginia constitution gave the right of registration before January 1, 1904, to those who had served in the army or navy of the United States, of the Confederate States, or of any state or any of the Confederate States (Art. II, sec. 19).

[2] Montgomery *Advertiser*, June 6, 1901, p. 11.

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of the Virginia committee on suffrage, would have divided the inhabitants into classes according to occupation, admitting to the suffrage those engaged in professional or skilled employments, and giving the legislature power to extend the privilege to certain classes of manual laborers.[1]

But one other feature of the suffrage plans need be mentioned. In each convention it was the evident purpose to obtain a plan of suffrage which would automatically exclude the Negroes and abolish all the old methods of fraud and force. But in neither was this altogether accomplished. The radical majority in both conventions reached the conclusion that their suffrage sieve would not be effective without some arbitrary administrative process. The promise to disfranchise not a single white voter made an impartial administration of any election law impossible, and required the granting of certain discretionary powers to the election officials. In each case, however, the matter was compromised by making this administrative partiality to the white voter a temporary affair, insuring the registration of all the whites who had voted under the old constitutions, and placing their names permanently upon the lists, providing that after a definite time the educational or property qualifications should be enforced, theoretically, upon whites and blacks without favor. The discretionary power in the Virginia constitution was found in that part of the temporary plan which required an applicant for registration who did not own property, or had not served in the army, or was not the son of a veteran, to be

> a person able to read any section of this constitution submitted to him by the officers of registration, and to give a reasonable explanation of the same; or, if unable to read such section, able to understand and give a reasonable explanation thereof when read to him by the officers.[2]

The Alabama provision was found in the good-character clause already quoted.[3] Under these two clauses it was evident that no impartial administration was contemplated. Little was said on

1 Richmond *Times*, July 17, 1901, p. 1, 2. The Alabama permanent provision required those who came under the terms of the educational clause to possess a regular lawful employment (Art. VIII, sec. 181).

2 Art. II, sec. 19.

3 See page 491.

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the subject in the Alabama convention, but the Virginia members were not chary of expressing their opinions, and some even insisted upon the adoption of a permanent administrative feature. Said a member of the Alabama convention:

> This is a commission of three to serve at two dollars per day to pass upon a person's good character. Men who are willing to serve at two dollars a day are to determine the duties and obligations of citizenship under the republican form of government, and they are to be appointed by a central commission at Montgomery. It is an abomination. . . . I say that no commission should ever pass upon my right to vote. I say that the law, as written here, should determine whether I have a right to vote or not.[1]

A Virginian who favored a permanent administrative clause gave his opinion of its efficacy in excluding the blacks:

> We think that it will be efficient because we do not believe that the Negro can stand this examination. We think it is a vastly different question from his reading and writing. . . . But it would not be frank in me, Mr. Chairman, if I did not say that I do not expect an understanding clause to be administered with any degree of friendship by the white man to the suffrage of the black man. I expect the examination with which the black man will be confronted to be inspired by the same spirit that inspires every man upon this floor and in this convention. . . . The people of Virginia do not stand impartially between the suffrage of the white man and the suffrage of the black man. If they did, this convention would not be assembled upon this floor. . . . We do not come here prompted by an impartial purpose in reference to Negro suffrage. We come here to sweep the field of expedients for the purpose of ridding ourselves of it forever. . . . But again, I expect this clause to be efficient, because it will act *in terrorem* upon the Negro race. They believe that they will have a hostile examination put upon them by the white man, and they believe that that will be a preventive to their exercising the suffrage, and they will not apply for registration.[2]

And another, who opposed the method, said:

> If we cannot get rid of the Negro vote except by resorting to such methods as this, I say better, far better, let us keep the Negro vote. . . . We know perfectly well — and I do not care who hears me say it —

[1] Montgomery *Advertiser*, July 25, 1901, p. 11.
[2] Richmond *Dispatch*, April 3, 1902.

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that if the Negro race did not exist this so-called understanding clause would never have been thought of. Now, what does that mean? I do not believe there is any man on this floor who himself would be willing to do dirty work for the purpose of keeping Negroes off the registration books. You gentlemen know what this means as well as I do. . . . We all know, in the depths of our hearts, whatever our motives may have been, that the reason we have put this understanding clause here at all is that we expect these registrars to favor the white man as against the Negro.[1]

Having now presented at some length the ideas that were operative in the two conventions, we may conclude this part of our study by a summary of the two suffrage clauses as finally adopted. The two constitutions agree in providing for distinct temporary and permanent plans, in requiring similar terms of residence and the same poll-tax rate ($1.50), and in prescribing elaborate methods of registration, with officials possessing under the temporary plans certain discretionary powers. The Alabama temporary plan gave the right to register before December 20, 1902, to those (1) who had honorably served in the land or naval forces of the United States in the War of 1812 or any subsequent war, or in the army of the Confederate States, or of Alabama during the war between the states; or (2) who were lawful descendants of the above class; or (3) who were persons of good character and understood the duties and obligations of citizenship under a republican form of government. The Virginia temporary plan authorized the registration, before January 1, 1904, of every one (1) who had served in the army and navy of the United States, of the Confederate States, or of any state of the United States or Confederate States; or (2) who was the son of any person in the above class; or (3) who had paid state taxes of one dollar on assessed property; or (4) who was able to read and explain, or understand and explain, any section of the state constitution. In both states the persons registered under these temporary plans acquired the right to vote for life, unless they were afterwards convicted of certain crimes. The Alabama permanent provision admits to registration after January 1, 1903, any one who has

[1] Richmond *Dispatch*, April 3, 1901, p. 12.

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paid all poll-taxes due since 1901, provided that he either (1) can read and write any article of the national constitution in the English language and has been regularly engaged in a lawful occupation for a year preceding his application to register; or (2) owns, or his wife owns, forty acres of land or $300 worth of property. The Virginia permanent plan requires the applicant after January 1, 1904, to have paid the poll-taxes, if due, for the three preceding years, and to be able to fill in all the details of his application blank in his own handwriting without assistance or memorandum.

By these elaborate provisions the existing white electorate was retained in each state, a very large proportion of the Negroes were excluded, and permanent features were adopted which, even with impartial administration, would lead to practical Negro disfranchisement. The very intricacy of the method would be its greatest deterring influence. The blacks

> will know that they first have to pass an examination; that then they have to make out their application for registration in their own handwriting; that they have to make out their ballot without assistance; and that they have to pay a capitation tax. These impediments will be too great for the Negro, and he will find himself, as a practical question, excluded from the suffrage.[1]

These are the words of one who helped to frame the Virginia article on suffrage.

III.

Turning now from the subject of the suffrage, we may notice the other elements of the new constitutions, and first of these, the organization of the three departments of government. Here there were no radical changes. The most marked feature was the same distrust of the state legislatures which has shown itself in all recent constitutions.[2] The fear of over-legislation was

[1] Richmond *Dispatch*, April 3, 1902.

[2] A remarkable exception to this feeling was the proposed constitution of Connecticut, rejected by the people at the polls on June 16, 1902. The convention making this document was opposed to the insertion of legislative and administrative restrictions, and the constitution was the shortest made in this country in many years. See Hartford newspapers, January 1 to July 1, 1902; entire constitution in Hartford *Times*, April 30, 1902.

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shown in the restriction of the legislature in Alabama to quadrennial instead of biennial, and in Virginia to biennial instead of annual sessions.[1] The same feeling was shown in the limitations upon local and special legislation, which had scarcely been restricted at all in the old constitutions.[2] The named subjects upon which special legislation is forbidden number thirty-one in the Alabama and twenty in the Virginia constitution; and in addition to these, there are elaborate provisions for the publication of local and special laws, and, in Virginia, for a special joint committee to consider such proposed legislation previous to reference to any other standing committee.[3] The requirements in respect to the consideration and passage of bills were expanded somewhat from the Alabama constitution of 1875, and in Virginia entirely new sections were introduced,[4] as the reconstruction constitution of 1870 had no restrictions on this point. In Alabama an interesting innovation required the governor, auditor, and attorney-general to prepare and have printed a general revenue bill before the session of the legislature.[5] Other new features in Virginia were the provision that no law, except a general appropriation law, should go into effect until ninety days after the adjournment of the legislature;[6] that the assembly should make no appropriations to sectarian organizations;[7] and that there should be a joint standing audit committee to examine annually or oftener the books of the state's financial officials.[8]

Comparatively few changes were made in the executive departments of the two states. In Alabama a lieutenant-governor

[1] Alabama constitution, Art. IV, sec. 46, 48; Virginia constitution, Art. IV, sec. 42, 46. Quadrennial elections and sessions of the legislature won also for a time in the Virginia convention (Richmond *Dispatch*, September 27, 1901), but upon reconsideration the term was cut down to two years. (*Dispatch*, January 17, 1902).

[2] Alabama constitution of 1875, Art. IV, sec. 23, 24; Virginia constitution of 1870, Art. V, sec. 20.

[3] Alabama constitution, Art. IV, sec. 104–111; Virginia constitution, Art. IV, sec. 62–66.

[4] Art. IV, sec. 50–53.

[5] *Ibid.*, sec. 70.

[6] With certain emergency exceptions by vote of four-fifths of each house. Art. IV, sec. 53.

[7] Art. IV, sec. 67.

[8] *Ibid.*, sec. 68.

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was provided for, and the commissioner of agriculture had the word "industries" added to his title, with presumably a corresponding extension of his duties. The terms of all elective officers were extended from two to four years to agree with the new election provision; the attorney-general, secretary of state, and state auditor were to constitute a board of pardons advisory to the governor; elaborate provisions were made for the gubernatorial succession, and the governor was forbidden to take any other office in the state or a seat in the United States Senate for one year after the expiration of his term as governor.[1] Sheriffs were disqualified for holding office more than one term, and were made subject to impeachment if prisoners were taken from their custody and lynched.[2] In Virginia the governor was authorized to suspend from office, during a recess of the legislature, any executive officer neglecting his duty,[3] to require information *on oath* from officials, and even to appoint expert accountants to examine their books.[4] Several executive officers were made elective by the people instead of by the assembly; minor changes were made in the method of passing bills over the veto of the governor; and the legislature was directed to provide by law for an "efficient system of checks and balances" among the officers intrusted with the receipt and care of public revenues.[5]

In the judicial department the most important change was the abolition, in Virginia, in the interest of economy, of the county court system, and the picturesque and popular "co'te-day." For this interesting relic of colonial times there was substituted a commonplace grouping of the counties into twenty-four numbered circuits, each circuit court having one judge elected by the legislature for eight years.[6] The old historic title of "hustings court" in the cities also gave place to the term "corporation court," and, in pursuance of its tendency to economies, the convention of Virginia permitted the abolition of corporation courts

[1] Art. V. [2] *Ibid.*, sec. 138. [3] Art. V, sec. 73. [4] *Ibid.*, sec. 75. [5] *Ibid.*, sec. 84.

[6] Art. VI, sec. 94–97. The committee report on judiciary was made November 21, 1901, and discussed November 29 to December 18, 1901 and January 6–9 1902. A strong effort to have the judges elected by the people failed. See Richmond *Dispatch* of above dates for debates.

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in the smaller cities and towns.[1] Minimum salaries were set for judges, and it was provided in the bill of rights that jury trials in minor criminal cases might be dispensed with if the accused persons agreed, and juries of less than twelve and more than five might be established by law for minor civil and criminal cases.[2] In Alabama the changes were chiefly verbal and administrative rather than organic. An attempt to have the judges appointed by the legislature instead of by popular election failed;[3] county solicitors, instead of getting their offices from the legislature, were made eligible by popular vote, and their term was changed from six to four years.

IV.

The two conventions under consideration have been the first to meet since the recent excessive growth of industrial trusts and railroad combinations, and naturally the subject claimed a large share of the attention of the delegates. Upon this subject the Virginia constitution has the more comprehensive provisions,[4] which make up one-fourth of the length of the whole document.[5] A long section[6] first defines the various terms used in the article, and then the usual provision is made that corporation charters shall be granted or amended only in accordance with general laws. Section 155 erects a permanent "State Corporation Commission," composed of three persons appointed by the governor with the consent of the assembly, for a term of six years, and receiving a salary of at least four thousand dollars; but after the year 1908 the legislature may provide for the election of the commissioners by the qualified voters of the state. The duties

[1] Art. VI, sec. 98. The demand for the reform of the costly court system was a strong reason for the calling of the convention, as President Goode said in his opening speech. (Richmond *Times*, June 13, p. 3.) On the second day of the convention Governor Tyler, in addressing the members, said: "We have become an office-ridden people." (Richmond *Dispatch*, June 14, p. 7.)

[2] No change was made in the method of appointing judges by the legislature, a feature common to all Virginia constitutions except that of 1850.

[3] Montgomery *Advertiser*, August 6, 1901, p. 1, 9.

[4] The committee report was made January 24, 1902, and considered February 4–20, 1902.

[5] Arts. XII and XIII.

[6] Section 153.

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of the commission are to issue all charters and amendments of charters to domestic corporations, and all licenses to foreign corporations; to supervise, regulate, and control all transportation and transmission companies, and for that purpose to prescribe reasonable and just rates, charges, classifications, and regulations; to examine the books of such companies and require reports from them; and to investigate the physical condition of the roads, their schedules, connections with other roads, *etc.* The authority of the commission in prescribing rates is paramount even to the legislature, but appeals may be taken to the Supreme Court of Appeals; and the commission has the authority of a court of record in enforcing its process and securing evidence. Other sections pertain to licensing foreign corporations, restraining the right of eminent domain, forbidding greater charges for short than for long hauls, prohibiting the grant of passes or free transportation to public officials, limiting the iniquitous doctrine of fellow-servant, encouraging parallel lines of railroads, and prescribing the careful exposition of financial plans before stock or bonds can be issued by a corporation. In addition to the ordinary taxation of the real and personal property of corporations, a franchise tax of one per cent is laid upon the gross receipts of transportation companies. Another section directs the legislature to pass laws preventing trusts, combinations, and monopolies inimical to the public welfare. No more comprehensive articles than these have been placed in any of our state constitutions.

In Alabama[1] the action upon corporations was much more conservative. A strong popular sentiment in favor of an elective railroad commission was seen in the frequent petitions which came into the convention.[2] That body, however, refused to make any constitutional provision for a commission, and left with the legislature the power to regulate railroad tariffs, correct abuses, and prevent discrimination. Other features of the article on corporations forbade the use of the streets of any municipality without the consent of the local authorities, required corporate powers

[1] The corporation committee reported July 26, and the subject was considered August 17-20, 1901.

[2] Montgomery *Advertiser*, June 27, July 22, 23, 1901.

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to be granted by general laws, directed the legislature to levy franchise taxes upon the capital stock of corporations, declared fictitious issues of stock void, and forbade the giving of railroad passes to officials and rebates to individuals.[1]

V.

The development of manufacturing industries and the shifting of population to the towns led both conventions to adopt numerous provisions for the control of municipalities. That the Alabama constitution of 1875 contained but a single short section upon the subject of municipalities[2] is not surprising in view of the fact that only 4.6 per cent of the population in 1880 dwelt in places of 4,000 or over. By 1890, 8.2 per cent dwelt in places having 4,000 population or over, and by the last census 10 per cent dwelt in such cities.[3] In Virginia, too, there has been an increase, somewhat less marked, of the urban population from 11 per cent in 1880 to 15 per cent in 1890, and 16.5 per cent in 1900. Between 1880 and 1900, three cities in Alabama increased in population from 48,931 to 107,230, and two in Virginia grew from 85,566 to 131,674.[4] Although these figures exhibit an urban development that is but slight as compared with what is seen in some Northern and Western states, yet the conditions called for some constitutional restraint upon the eager and hasty action of growing municipalities.

The Alabama constitution places municipalities in a subdivision of the general article on corporations, while the Virginia document, following that of 1870, devotes a separate article to the organization and government of cities and towns. In Alabama, the convention, which usually followed closely the reports of its committees, rejected a large part of the reported plan upon municipalities.[5] It refused to compel the legislature to classify cities, refused to grant local option and popular vote in the formation and adoption of municipal charters, and changed the proposed

[1] Art. XII, sec. 227–246.

[2] Art. X, sec. 7.

[3] Bulletin of Twelfth Census, No. 70, p. 4.

[4] *Ibid.*, p. 12, 13.

[5] The committee reported June 6 and 24, 1901. See *Annals of the American Academy*, Vol. XIX, p. 143–145.

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duration of public franchises from twenty to thirty years. In Virginia, the committee report was followed more closely.[1] There a city was defined as an incorporated place having a population of 5,000 or over, other incorporated places being called towns; while in Alabama the phrase "cities, towns, or other municipal corporations" is not defined, although many of the provisions are limited to places having over 5,000 population. Both constitutions provide for general laws relating to cities,[2] but Virginia goes farther and outlines an elaborate plan of municipal organization, descending into the sphere of ordinary legislation. It names the municipal officers, — mayor, treasurer, sergeant, judge, clerk of court, commissioner of revenue, and members of the two branches of city councils, — specifies their terms of office (usually four years), and in some cases states their duties.

In each state the important questions of municipal policy are settled by the provisions that no franchise for the use of streets can be given except with the consent of the local authorities, and that such franchises shall be limited to thirty years;[3] in Virginia, moreover, there must be a public advertisement for competing bids. In Virginia, also, no sale of public places, such as docks, wharves, streets, parks, or bridges, or of gas, water, or electric works, can be made without the affirmative vote of three-fourths of all the members elected to the municipal councils.

Up to very recent years the principal municipal subject with which constitution-makers concerned themselves was that of taxation and indebtedness. The two Southern conventions did not neglect the subject. Virginia places no general limit on municipal taxation, but she restricts the local school tax levied by any school district to five mills on the dollar,[4] although the assembly may authorize a local poll-tax for educational or other local purposes not exceeding one dollar in addition to the state poll-tax

[1] The report was presented January 10, 1902, and considered January 20–29. (Richmond *Times*, January 12, p. 6).

[2] In Virginia certain special legislation is permitted by a vote of two-thirds of each house of the legislature (sec. 117).

[3] "Except railroads other than street railroads" (Alabama); "except for a trunk railway" (Virginia).

[4] Art. IX, sec. 135.

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of a dollar and a half.[1] In Alabama the general limit to municipal taxation is one-half of one per cent of the valuation of property as fixed by the last state assessment;[2] but this is subject to so many exceptions as to be almost nugatory. Montgomery, Mobile, and sixteen other designated cities and towns may exceed the limit for certain purposes and in certain proportions.[3] This is almost worse than no restriction, since it gives the present cities and towns an advantage over any which may subsequently spring up. The lawful indebtedness of cities and towns is limited in Virginia to eighteen per cent of the assessed valuation of "real estate," and in Alabama to five per cent of the "property," for cities under 6,000 population, and to seven per cent for those above that size; but in both states there are exceptions to the restriction.[4] Both except from the total debt notes issued in anticipation of revenue; and Virginia reasonably enough excepts bonds for those public improvements from which the income is sufficient to pay the interest and a proportionate amount of the principal of the investment.[5] In Alabama there is again a jumble of special provisions for particular localities. The seven-per-cent limit is extended to four towns whose population in 1900 varied from 2,100 to 4,437;[6] the limit does not apply to bonds issued for schoolhouses, waterworks, or sewers; and two cities are exempted from all the provisions.[7] Such features show the convention in the light of passing the special legislation which it forbade the legislature to enact. On the other hand the Virginia article embodies some of the soundest modern ideas upon municipal government.

[1] Art. XIII, sec. 173.

[2] Art. XI, sec. 216.

[3] *Ibid.* A tax of one per cent may be levied to pay debts contracted before December 6, 1875; Mobile may levy a tax of three-quarters of one per cent, Montgomery a tax of one and one-quarter; and Birmingham, Huntsville, Bessemer; Andalusia, Troy, Attalla, Gadsden, Woodlawn, Brewton, Pratt City, Ensley, Wylam, Avondale, Decatur, New Decatur, and Cullman may exceed the limit in fixed amounts for specified purposes.

[4] The great disparity in the debt limit in the two states must be due to different methods of assessing property.

[5] Art. VIII, sec. 127.

[6] Art. XII, sec. 225.

[7] Sheffield and Tuscombia.

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VI.

Considerable attention was given in both conventions to the general subject of taxation, particularly to the questions of taxing corporations upon their franchises and of limiting the amount of state taxation.[1] In Alabama the limit of state taxation was placed at sixty-five one-hundredths of one per cent on the assessed valuation of all property;[2] in Virginia, where the current rate had been four-tenths of one per cent, the limit was placed at two-tenths of one per cent for general state purposes, one-tenth for school purposes, and a possible five one-hundredths for pensions, making the extreme limit thirty-five one-hundredths of one per cent; but after 1907, the legislature was empowered to fix a different rate.[3] Alabama did not provide for a franchise tax on corporations, but empowered the legislature to levy such a tax; while Virginia adopted an elaborate system of taxing transportation companies.[4] According to this plan, each railroad or canal company in the state must pay the legal rate of taxation upon its property and also a franchise tax of one per cent of the gross transportation receipts from traffic within the state. The property and franchise taxes are to be based upon annual reports made by the companies to the state corporation commission. This method of taxation may be modified in any way by the legislature after the year 1913. The Virginia legislature is further empowered to levy income and license taxes, but incomes under six hundred dollars are exempted from taxation;[5] and the Alabama legislature is expressly authorized to impose a collateral inheritance tax not exceeding two and one-half per cent.[6]

Before the meeting of the conventions and during their sessions, there was evidence of a public feeling in favor of a change from

In Alabama the committee report on taxation was presented June 14, and considered June 24 to July 5, 1901; the Virginia report was made January 30, and discussed February 21–26, March 4–7, 1902. The debates in Virginia were particularly interesting.

[2] Art. XI, sec. 214.

[3] Art. XIII, sec. 189.

[4] *Ibid.*, sec. 176–181.

[5] *Ibid.*, sec. 170.

[6] Art. XI, sec. 219.

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the existing method of dividing the school fund between the two races.[1] This method provided for the apportionment of the fund according to the relative numbers of the school population of the two races. The new plan, which had some popular support, proposed dividing the school income between the two races in proportion to the amount of school taxes paid by each race, — a method which would have greatly decreased appropriations to colored schools. In neither state, however, did a majority of the committee on education favor division of the school funds according to tax payment.[2] A minority report in Alabama provided for the division of the state into white school districts and colored school districts without regard to the limits of one another, and gave to the respective white or colored voters in each district the power to determine the amount of taxation upon their own race for their own schools.[3] The report was not adopted, and the completed constitution provides apparently for an impartial division of the school income.[4] In Virginia the committee report granted some concessions to the black-belt representatives; the permanent school income from the "literary fund" and state taxation was to be apportioned according to the school population irrespective of race, but the income from local taxation for school purposes might be expended by the local authorities "in establishing and maintaining such schools as in their judgment the public welfare may require."[5] This left the distribution of

[1] See a cool, dispassionate argument favoring the absolute disfranchisement of the Negro and the withholding from him of educational rights, in order to prevent his economic competition with the white race, by R. H. Dabney, in Richmond *Times*, October 6, 1901, p. 18; and adverse editorial comment, October 10, p. 4. On the general discussion see also Richmond *Times* and Richmond *Dispatch*, June 26, 27, and July 24, 25, 1901; Montgomery *Advertiser*, June 2, 5, 6, 18, 1901.

[2] The Alabama committee reported July 12, and their report was considered August 14–16, 1901; the Virginia committee reported November 13, 1901, and the subject was considered November 15–25, December 18–20, 1901, January 4, 8–10, 16, 24–27, 1902.

[3] Montgomery *Advertiser*, August 16, 1901, p. 10 *et seq.* A spirited debate took place over the question, but the minority report was defeated by a vote of 90 to 31.

[4] Art. XIV, sec. 256, 269.

[5] See report in Richmond *Dispatch*, November 14, 1901; and the debate in *Dispatch*, November 23. Constitution, Art. IX, sec. 136.

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their local taxes to be determined by the white officers of the district, and naturally meant the extension and strengthening of the white school system.[1] The provision was inserted in the constitution.

Beyond the settlement of this important question, there were some minor changes in the school systems of the two states. Alabama gave counties the right to levy taxes for school purposes, and, taking from the governor the right to nominate trustees of the state university, gave that power to the trustees themselves, who could nominate for vacancies in their own number, subject to approval or new election by the legislature. In Virginia there were several changes in the direction of democratizing the school administration. The state superintendent, hitherto appointed by joint ballot of the assembly, is to be elected by the voters for four years; the state board of education, in addition to its former members (the governor, state superintendent, and attorney-general), gains five experienced educators, — three selected by the senate from a list of eligibles nominated from the faculties of six designated institutions by the trustees of those institutions, and two local superintendents chosen by the other members of the board.[2] The legislature is permitted to establish compulsory education between the ages of eight and twelve years,[3] but is prohibited from making appropriations to any educational institutions except those owned exclusively by the state.[4]

VII.

Both of the conventions took action on the question of the powers of a constitutional convention, and its relation to the former constitution or to the laws providing for its assembling. On the first day of the Richmond convention, a warm debate was precipitated by the proposition to ignore the oath of office

[1] So thought a representative of the "black belt." (Richmond *Dispatch*, November 23, 1901, p. 8).

[2] Art. IX, sec. 130.

[3] *Ibid.*, sec. 138.

[4] *Ibid.*, sec. 141. William and Mary College was specially excepted from this restriction.

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as laid down in the former constitution.[1] The objectionable section required not only an oath to support the United States and the state constitutions, but also bound the officer to accept and recognize the "civil and political equality of all men before the law." As the convention was called to change the old constitution, it was urged that the members could not swear to observe it; and as they were about to limit the suffrage to whites, they could not morally take a pledge to recognize the political equality of all men.[2] The question came as a surprise to the members and led to a somewhat bitter discussion, the convention at last, by a vote of 56 to 38, refusing to take the oath to the Underwood constitution.[3] The Montgomery delegates did not have the same difficulty, for a special oath was prescribed in the act calling the convention, and no objection was made to it.[4]

A second question of conventional power arose over the proposition to promulgate the constitutions instead of submitting them to a vote of the people, the latter being required by the enabling act in each state. Early in the Alabama convention the suggestion was voted down, and the convention pledged itself to submit its work to the ratification of the people.[5] At Richmond, also, the question was early taken up, having arisen over the phraseology of the preamble, the first subject to be definitely discussed; but its settlement here was not so speedy. The consciences of the members were burdened not only by the general custom in earlier Virginia conventions and by the solemn promises of the last Democratic state convention, but also by

[1] The oath is as follows: "I, ———, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the constitution and laws of the State of Virginia; that I recognize and accept the civil and political equality of all men before the law; and that I will faithfully perform the duty of ——— to the best of my ability: So help me God." Constitution of 1870, Art. III, sec. 6.

[2] Many outside newspapers confused the subject, and thought the convention refused to swear to observe the United States Constitution because they were about to break its amendments. See Richmond papers during June for editorials and extracts.

[3] Richmond *Times* and *Dispatch*, June 13, 1901; an attempt, on June 21, to reconsider the action was defeated on the 28th after a long debate.

[4] Act of Dec. 11, 1900, sec. 12.

[5] Montgomery *Advertiser*, May 25, 1901, p. 10. See Act of December 11, 1900, sec. 22–26.

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the precise terms of the act of the legislature calling the convention.[1] The debate on the question began on July 29, and continued from that time till August 3, and, after an adjournment, from August 23 to September 5, when the matter was postponed until the constitution had been completed. Five or six hours of debate daily for eighteen days had not settled the question. The arguments favoring submission to the existing or the abridged electorate were drawn mainly from the history and theory of conventions; the practice of earlier Virginia conventions was cited, Jameson on *The Constitutional Convention* and Wood's *Appeal in Pennsylvania* were quoted to show that a convention could not overrule the legislative act calling the body; and fervent appeals were made to the members to respect the party promises. Those favoring proclamation reasoned from expediency and from the sovereign character of a constitutional convention; the promises of a party caucus could not bind the members of a solemn constitutional convention, nor could the legislature, the creature of a former constitution, bind a convention which was drafting a new document. It was feared that the officeholders who would lose their positions under the rigorous economy of the new constitution, would join with the railroad corporations, who also were opposed to the new frame of government, and with the money of the latter defeat the constitution in a popular election. Men from the mountains argued that some of the poorer whites, fearing disfranchisement, might also join with the corporations.[2]

After the postponement of the subject in September, 1901, there was little apparent popular interest until about January, 1902; but a possible solution had already been suggested in the proposal to allow the Democratic primaries of the state to determine whether the constitution should be submitted or proclaimed.[3] By February, 1902, both the Richmond *Times* and the *Dispatch*

[1] Act of February 16, 1901, sec. 12–17.

[2] For the whole debate on this subject, perhaps the most interesting which has ever taken place in any of our conventions, see the Richmond *Times* and *Dispatch* (particularly) for July 30 to September 6, 1901, and May 24 to May 31, 1902.

[3] Mr. Walton Moore was the reputed author of the suggestion. (Richmond *Dispatch*, August 27, 1901, p. 1, 3).

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thought that submission was assured,[1] but a speedy change took place, and the latter paper, although favoring submission, believed, by March 28, that proclamation would win. On April 4, the convention took a long recess until May 22, ostensibly to give the committee on final revision an opportunity to complete its work, but also, no doubt, in order that the members might, through Democratic mass-meetings, learn the sentiments of their constituents.[2] Not formal primaries, as first proposed, but informal mass-meetings of Democrats, were accordingly held in the various counties and cities, and a large majority of these meetings instructed their delegates in the convention to vote for proclamation.[3] Thus the promise of the regular Democratic party state convention was annulled and the members were freed from the moral restraint of that pledge. The law of the legislature was more easily set aside, in the opinion of the majority of the convention, than the party pledge; and some of those who to the last favored submission, on the grounds of the pledge, admitted the right of the convention to act independently of the enabling acts of the legislature.[4] On May 29, the forces for proclamation won by a vote of 48 to 38, and the constitution was accordingly promulgated by the convention.

Although the Alabama convention early agreed to submit its constitution to popular vote, yet it, too, was brought face to face with the restraint of the enabling act of the state legislature. The act had declared that the members of the convention should draw pay for only fifty actual working-days.[5] The fiftieth day would arrive on July 20, and the work of the convention was scarcely half completed. Would the members respect the law and work on without compensation, or would they ignore the legislature and settle their own pay? There was little debate on the subject, and the convention on July 19 decided that it

[1] *Times*, January 31, 1902, p. 6; *Dispatch*, February 15, p. 1.

[2] Richmond *Dispatch*, April 5, 1902, p. 4.

[3] The details of this remarkable canvass of the state will be found in the news columns of the Richmond papers from April 5 to May 24, 1902.

[4] Senator Daniel, in speech on May 23, 1902.

[5] "The per-diem compensation shall not be allowed or paid to any member of the convention for a longer time than fifty days." Act of December 11, 1900, sec. 9.

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would remain in session until its work was completed, and that the members should draw pay at the rate authorized by the legislature for the fifty days.[1] The enabling act in Alabama had also a number of provisions which the convention was required to insert in the new document, "if such convention be called."[2] These dealt with the basis of representation, the taxing power of counties and cities, equality of taxation, and forbade the incorporation into the constitution of any clause looking toward a change of the state capital or a modification of the exemption laws of the state. In all these cases the convention followed, in the main, the terms of the act, although it deviated somewhat from the instructions concerning local taxation, particularly exempting many cities and towns from the restrictions which the legislative act enjoined it to adopt. The changes here were not radical, but in continuing their own pay the convention went directly contrary to the intention of the legislature. The question was a minor one, yet it involved the same principle as that in the Virginia convention, and it was settled, as at Richmond, in favor of the convention's power. The Alabama delegates evidently determined that the question should not trouble future conventions; for they inserted a clause in the constitution guaranteeing the power and jurisdiction of constitutional conventions to perform such things as might seem to them necessary and proper to the amending and revising of the constitution.[3] Thus the Alabama convention in one case, and the Virginia body in two distinct instances, asserted their superiority to the existing laws and government.[4]

We have now noticed the principal innovations of the two new constitutions in detail. They may be summarized as follows:

[1] By a vote of 108 to 13. (Montgomery *Advertiser*, July 20, 1901, p. 10).

[2] See sections 15 to 21½ of the act of December 11, 1900.

[3] Art. XVIII, sec. 286.

[4] The Southern conventions have often assumed greater powers than similar bodies in the North, particularly in promulgating constitutions. It is interesting to note that the Connecticut convention, in session at the same time as the Virginia body, did not listen to a hint of proclamation, although the danger of defeat seemed greater in that state than in Virginia, — a foreboding which came true in the election of June 16, 1902.

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(1) the legal disfranchisement of the Negro; (2) many new limitations upon the power of the legislature, particularly the requirement of infrequent sessions; (3) in Virginia, and slightly in Alabama, a tendency to extend the principle of popular election to formerly appointive offices; (4) restrictions upon the financial powers of municipalities; (5) more rigid supervision and control of private corporations, especially transportation and transmission companies; (6) a general increase in the number of provisions touching economic matters; (7) the expunging of the reconstruction phraseology; (8) a strengthening of the power of constitutional conventions.

ALBERT E. MCKINLEY.

PHILADELPHIA, PA.

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THE GERMAN JUDICIARY. II.

IN a previous number of the QUARTERLY[1] a somewhat detailed sketch of judicial organization in the German Empire was attempted; in the following pages an effort will be made to present some phases of German judicial service, judicial procedure, and judicial power.

1. THE JUDICIAL SERVICE.

From the standpoint of its character, judicial service in Germany is both lay and professional. The special tribunals, such as the commercial, industrial, and consular courts, are made up of laymen, who enjoy the rights and privileges of professional judges, although their service is, for the most part, voluntary, unsalaried, and definite in tenure. Among the regular tribunals, the participation of the lay element appears only in the *Schöffen* courts, where the professional judge associates with himself two assessors for the trial of minor criminal cases. The other regular courts consist entirely of judges who have received thorough academic and practical training for judicial careers and who gain admission to the service only through state examination. In order to secure a certain standard of legal training for the judges of the regular courts, the Imperial Judicature Act of 1877 prescribes certain minimum qualifications for admission to the service, leaving to the individual states the regulation of the course of legal study to be pursued, the conduct of the examination, and the appointment of the judges. The requirements of the imperial law include at least three years' study of jurisprudence at some university, one-half of which period must be passed at a German university. This academic training must be followed by a period of at least three years' preparatory service as *Referendar*, that is, as assistant judge or attorney, a portion of which period must be in the office of a public prosecutor. These are the qualifications for membership, and a candidate who has once qualified is

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eligible to judicial office anywhere in the empire,[1] in all the regular courts, imperial as well as state. The only exception to the rule establishing these qualifications is in the case of regular law professors in German universities, who are qualified for judicial stations by virtue of their profession. At present there are about 8,000 judges in the empire who hold office as professional judges. The power of the states to add to the qualifications prescribed by imperial law, to prescribe the course of study and the nature of the preparatory service, and to fill the judicial positions except in the case of the imperial court, was conceded to them out of consideration for their so-called *Justizhoheit*.[2]

Besides undertaking to secure a body of learned and well-trained judges through high standards for admission to the service, the imperial law of 1877 sought to establish the independence of the judiciary beyond all possibility of interference upon the part of the administration. In all the monarchical states of Germany, the prince is theoretically the possessor of the judicial power; but since the middle of the nineteenth century this power has everywhere been exercised through courts created by law, which are, so far as their purely judicial activity is concerned, independent of the prince or his subordinates. The imperial act of 1877 declared this to be the position of the judiciary in all the states of the empire. The prince appoints the judges and commissions them for life, and they exercise their functions in his name; but the commission once bestowed is irrevocable. Neither the king nor his minister of justice can instruct a court as to the manner in which it shall decide a given case, or make rules for the procedure of the court with a view to changing the material content of the decision. Nor can the judge be removed or suspended or, save with his own consent, transferred by the royal authority. Removal or suspension can be effected only by resolution of the court sitting as a disciplinary tribunal, and then only after regular trial and for reasons expressly provided in the laws. The involuntary transfer of a judge to another district can follow only as a punishment inflicted by a disciplinary court or in consequence of a reorganization of the court or

[1] Gerichtsverfassungsgesetz, sec. 2.

[2] Laband, Staatsrecht des deutschen Reichs, Bd. II, S. 432.

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of the district, and then only in the interest of the administration of justice. Moreover, the judge so transferred must be assigned to another station of equal rank and pay, and with an allowance sufficient to cover the expense incurred in making the change of residence. Likewise, retirement from the service can be forced upon a judge only by resolution of the court and for reasons stated in the laws.

These rules concerning the tenure and independence of the judges are recent judicial reforms of the first magnitude. It was formerly a common practice in Germany, as it is still in certain other continental states, notably in Italy, for the minister of justice to transfer to less desirable stations judges who refused to show the proper degree of subservience to the government — "reassignment in the interest of the service" it was called.

The position of the judges is further fortified by the provision of the Judiciary Act requiring the individual states to assign to them a fixed salary (*festes Gehalt*) exclusive of fees, and declaring that a judge's claim for salary and pension shall always be enforceable in the courts.

As a means of reaching an incompetent or corrupt judge, the Judiciary Act prescribes a series of penalties which may be inflicted by a disciplinary court. These are warning, reprimand, transfer to another station of equal rank but with a diminution of salary, suspension, and dismissal with loss of title and right to pension. The courts competent to inflict these penalties as well as their procedure are regulated by law.

The independent position which the reform measures of 1877 secured for the German courts, however, applies only to their purely judicial activity (*Rechtssprechung*). So far as their activity is of an administrative character (*Justizverwaltung*), they are subject to the oversight of the minister of justice or the Imperial Chancellor. This oversight includes visitation of the courts, revision of their order of business, and the requirement of reports from them, chiefly concerning alleged denials or delays of justice. If the reports disclose a failure of justice from any cause, the government may issue mandates to the courts to afford the desired relief. But such commands may never relate to the material content of the decision. The principle is thoroughly es-

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tablished that there is no other authority for the judge than that of the laws. When a decision has once been reached by the court, its validity is not conditioned upon the approval of the king or of his minister of justice, as was formerly the case. Along with the development of absolutism in Germany after the seventeenth century, the princes came to exercise an extended personal influence over judicial functions through the right which they claimed to approve the important decisions of the courts. This was particularly true in Brandenburg-Prussia, where the act of approval was not merely perfunctory, but went to the content of the decision and included the authority to revise it or substitute another in its stead. Both Frederick William I and Frederick the Great claimed this right. The former reserved to himself the final decision of all important criminal cases, while the latter claimed a similar right in regard to offenses punishable by death or by imprisonment for a period of ten years or more. For a long time after the establishment of professional courts, the princes were disinclined to recognize the full independence of the courts in criminal matters, although they readily conceded it in civil matters. This distinction continued as a legal principle in Prussia and other territories until the nineteenth century, and was sanctioned by the Prussian criminal code of 1805. As late as 1821 the prince of Electoral Hesse claimed and exercised the right to pass upon all important criminal decisions made by the courts of his state.[1] The judicial reforms of 1877 swept away this last vestige of *Kabinetsjustiz*, which was one of the crying evils of Germany during the period of the old empire.

A further guaranty of judicial independence is seen in the provision that the authority of the judge shall not be superseded by extraordinary tribunals created by the government. Exceptional courts are absolutely forbidden, and the government may not prosecute the individual before any other than his lawful judge.[2] This provision first appeared in the Prussian constitution of 1849, and it became the law of all Germany in 1877.

There remain two possible sources of executive influence upon the course of judicial proceedings. The first is the power of the

1 Schulze, Das preussische Staatsrecht, Bd. II, S. 285, 346.

2 Gerichtsverfassungsgesetz, sec. 16.

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administration over the institution of criminal prosecutions, and the second is the right of the crown to grant pardons. In Germany the public prosecutors alone have the right of beginning a prosecution, and they are subject to the oversight and direction of the minister of justice or the Imperial Chancellor.[1] It belongs, therefore, to the government to direct the prosecution of a criminal or to order the dismissal of a prosecution once begun. To avoid the possibility of arbitrary action upon the part of the government with a view to shielding from punishment one of its agents who may have turned criminal, it is provided in the imperial code that where a public prosecutor, either upon his own responsibility or in pursuance of instructions from the minister of justice, refuses to take action, the injured party may appeal to the court for an order directing that a prosecution be instituted.[2] This provision has been a means of checking abuses which were quite common in Germany before the establishment of the present empire, and which are still common in certain other continental countries, notably France.

As to the pardoning power, which in Germany first belonged to the judge, this came to be exercised by the princes after the sixteenth century, and was acknowledged as their undoubted right by the close of the seventeenth, with the possible exception of crimes against God and the divine command.[3] This power of the princes was not disturbed by the creation of the empire, except that certain rules were prescribed in accordance with which it was to be thereafter exercised, and that the Emperor was vested with the right of pardon in certain specified cases.[4] In all the German states the authority of the prince in this domain includes the power to absolve the convicted criminal from all the legal consequences of his act, the power to commute a sentence, and the power to remit fines and forfeitures. The right to stop judicial proceedings when once they have begun (*Niederschlagung*) is not a right of the crown in Prussia and most of the other states, except upon the authorization of a special law.[5] Where it exists

[1] Gerichtsverfassungsgesetz, sec. 148. [2] Strafprozessordnung, secs. 170–173.
[3] Meyer, Staatsrecht, S. 446.
[4] Laband, Staatsrecht des deutschen Reichs, Bd. II, sec. 93.
[5] Verfassungsurkunde für dem preussischen Staat, art. 49.

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it is limited to certain cases and is subject to other restrictions. The right of pardon does not extend to offences committed by ministers in the performance of their official duties. It seems clear that the German scheme of executive clemency is not a source of great danger to the proper administration of justice.[1]

2. Judicial Procedure.

The present system of judicial procedure is the result of centuries of historical development. Until the sixteenth century the old *Sachsenspiegel* was the basis of the criminal law and criminal procedure in north Germany. From then until the beginning of the eighteenth century its place was taken by the penal code prepared under the direction of Charles V.[2] From this latter code the modern principles of voluntary confession, publicity of trial, oral procedure, and public accusation were wholly or partially absent. This illiberal, not to say barbarous, procedure was chiefly the result of the reception of the Roman and Canon law in the later Middle Ages. Toward the middle of the eighteenth century the powerful influence of the Protestant universities, together with the doctrines of certain of the philosophers, notably Montesquieu, Beccaria and Filangieri, concerning natural rights, began to work changes in the criminal law in the direction of a more enlightened and humane system.[3] The jurists began to repudiate the ideas borrowed from the Roman and Canon law as a foreign importation, and sought to suppress in the name of humanity a procedure which favored the prosecution at the expense of the accused. The first result of the movement was the abolition of torture.[4] Frederick the Great sympathized with the new view and introduced into the criminal code which he had prepared for the Prussian state the enlightened and humane ideas of the eighteenth-century philosophy, among others the abolition of the rack as an instrument of extorting confession, except in cases of treason and certain particularly aggravated cases of homicide. By the

[1] Gerichtsverfassungsgesetz, secs. 7–9.

[2] Von Rönne, Preuss. Staatsrecht Bd. II, Abth. II, S. 51.

[3] Schulze, Das preussische Staatsrecht, Bd. II, S. 330.

[4] Torture as a means of exacting confession existed in Prussia until 1805, in Bavaria and Wurtemberg until 1806, in Hanover until 1822, and in the Duchy of Gotha until 1828.

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beginning of the nineteenth century the more liberal principles of the old German procedure were being incorporated in the codes of Austria, Prussia, and Bavaria. In all of them, however, the practices of inquisition, written procedure, legal proofs, and secret trial were still retained. Public oral procedure had been a well-recognized principle of the old German law but had been displaced by the less liberal Roman method. According to the latter method, the written accusation and the answer constituted the real basis of the trial, and not simply a preliminary stage, as now. The accused had no opportunity to introduce new evidence in the course of the trial, to raise a new defence, or take an exception. By the system of legal proofs, the judge formed his opinion from the contents of written documents, and often had to condemn against his own convictions. The publicity which is the only effectual control over an ignorant and arbitrary judge was not allowed in the procedure. Except in the Rhenish provinces, where French legal institutions had been introduced, publicity did not gain foothold in Germany until near the middle of the nineteenth century. In 1843 it was introduced into the criminal code of Wurtemberg for certain heinous offences, and in 1845 into the Bavarian code except in preliminary examinations. In 1846 it was introduced as a feature of the procedure of the *Kammergericht* and the other criminal courts at Berlin. About the same time the principle was adopted in other German states, but everywhere accompanied by restrictions which materially impaired its value. As a result of the events of 1848, publicity of procedure was established as a permanent principle of German jurisprudence, and the principle was made general for the whole empire by the Imperial Judicature act of 1877.[1] Hand in hand with the struggle to secure publicity proceeded the movement to secure the adoption of oral procedure (*Mündlichkeit*). To Hanover seems to belong the honor of first having adopted this as a feature of her judicial procedure. A little later the principle was incorporated in the Bavarian code. It was one of the proposed reforms of 1848, and, like the principle of publicity, became a permanent feature of German jurisprudence as a result of the events of that year, and was made obligatory upon all the states in 1877.

[1] Gerichtsverfassungsgesetz, sec. 170.

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In other respects great variety existed in the judicial procedure of the several states. Except in the Rhenish provinces, trial by jury did not gain a foothold in Germany until the middle of the last century, and even then it was introduced subject to restrictions and exceptions.[1] The Imperial Judicature Act of 1877 at last established trial by jury throughout the empire, with the single qualification that, in respect to violations of the press laws, each state should be left to its discretion.[2] These changes were accompanied by the substitution of the accusatory method (*Anklageprozess*) for the inquisitorial process which had been introduced into the German procedure as a result of the reception of the Roman and Canon law. According to the latter method, there was no specific accusation against the offender except such as the judge formulated himself, and there was no accuser whom he could face. The judge took cognizance upon information or even suspicion; the accused had few or no rights which the judge was bound to respect, and but the scantiest guarantees against abuse and injustice while undergoing trial. Confession was regarded as the best of evidence, and hence recourse was had to torture. It was next to impossible for the accused to establish his innocence, and the pursuit of justice under such circumstances was often a mere game of chance.[3] A modification of the inquisitorial method was borrowed from the French in the early part of the nineteenth century, and introduced in the belief that something like the English and American practice was being secured; but it proved to be quite unsatisfactory and in many respects irreconcilable with the German theory of judicial independence. In 1849 it was abandoned by Prussia and a public prosecutor was provided. This institution soon became a general feature of German jurisprudence.

The imperial codes of procedure, therefore, are based on publicity of trial, oral procedure, accusation by a public prosecutor, and participation of the lay element in determining judgment —

[1] An amendment to the Prussian Constitution adopted in 1852 provided that the guilt of the accused should be determined by a jury in so far as exceptions were not made by law.

[2] Bismarck insisted upon this exception. At present only four states, Baden Bavaria, Oldenburg, and Wurtemberg, permit trial by jury in press offenses.

[3] Schulze, Das preussische Staatsrecht, Bd. II, S. 336.

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the jury for crimes, and *Schöffen* for minor offences. As already mentioned in another connection, the state has in most cases the exclusive right to begin a prosecution, but when an action has once been instituted, private parties are permitted to join in carrying it on. The state-attorneyship (*Staatsanwaltschaft*), like many other German legal institutions, came from France. It was introduced into the Rhenish territories by the French criminal code of 1808, but only in a restricted sense did it gain a foothold in the other German states before 1848. After that year, in connection with public oral procedure and trial by jury, it became a constituent part of the reformed criminal procedure. In some states the public prosecutor had wide and important functions, in others his sphere of activity was greatly limited.[1] By the imperial act of 1877, it was provided that in all criminal, divorce, and lunacy proceedings the state should be represented by a public prosecutor.[2] In connection with the imperial court there is a chief attorney-general (*Oberreichsanwalt*) and one or more attorneys-general (*Reichsanwalte*). To each of the higher state courts is attached at least one state attorney (*Staatsanwalt*), and to each *Schöffen* court and magistrate's court at least one district attorney (*Amtsanwalt*). The imperial code of criminal procedure[3] declares that every step in a criminal proceeding shall be dependent upon the action of the public prosecutor; but under certain circumstances his action is reviewable by the court, as for example where he declines to prosecute a case.[4] The imperial prosecutors are under the control of the Chancellor, while the state and district attorneys are under the supervision of the respective ministers of justice, and every prosecutor is required to obey without question the commands of his superior. The imperial attorneys are appointed by the Emperor in the same manner as the imperial judges. The state and district prosecutors, although the creation of imperial law, are regarded as officers of their particular states (*Landesbeamte*), and their appointment, compensation, removal, and discipline are all under state rather than imperial

[1] Holtzendorf, Rechtslexicon, Bd. III, S. 740.
[2] Gerichtsverfassungsgesetz, sec. 142; Laband, *op. cit.*, II, 395.
[3] Secs. 151, 152.
[4] *Ibid.*, secs. 170–173.

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control. The qualifications of all public prosecutors, except those attached to the magistrates' courts, are the same as for the judges. The familiar principle of the German law — that no one shall be denied the right of trial by his lawful judge — has no analogous application in the case of public prosecutors, for the minister of justice or the chief prosecutor attached to the court is empowered to designate the prosecutor in a particular case.[1] It is admitted that this is a possible source of arbitrary action upon the part of the government.[2]

The imperial code of civil procedure requires that every suitor in the courts shall be represented by an attorney who has been admitted to practice before the court in question, while the code of criminal procedure permits, and in certain cases requires, that the accused be represented by an attorney at every stage of the proceedings.[3] If the accused is unable to employ counsel, the

[1] Gerichtsverfassungsgesetz, sec. 146.

[2] Laband, *op. cit.*, II, 400.

[3] In this connection a note concerning the German bar may not be out of place. The reception of the Roman law and the displacement of the *Schöffen* courts by tribunals held by judges learned in the Roman law gave rise to the necessity for a body of attorneys who were acquainted with the new law and procedure. At first those admitted to practice were limited in number, were subject to a rigid disciplinary supervision, and were controlled by the judge, frequently in a manner highly discreditable to the court. The attorney had little opportunity to distinguish himself by unusual talent or legal erudition; he lacked every feeling of independence and of professional honor; the higher offices were closed to him; and he came to be hated and shunned as an avaricious and incompetent vampire (Bruder, Staatslexicon, I, art. *Staatsanwalt*). For a time under Frederick the Great the bar was actually suppressed as an intolerable evil. During the first half of the nineteenth century, in connection with the efforts everywhere in Germany to reform the criminal law and procedure, attempts were made to elevate the position of the bar, and restore it to a place of respectability. In some states the legal profession was made, wholly or partially, a free pursuit; in others the number admitted was restricted, and their duties were minutely prescribed by law. In other respects there was great lack of uniformity. The development of the bar was entirely different from that of England and the United States, where public oral procedure was allowed, and where from the first the advocate enjoyed a large measure of independence, and occupied a position of great respectability. A notable change in the position and character of the bar took place after the events of 1848, and by the imperial laws of 1877 it was placed upon its present basis. The imperial law regulates in great detail every phase of the legal profession. It prescribes the qualifications for admission thereto, which in the main are the same as those for judicial stations, provides for the maintenance of a high standard of professional conduct, and regulates with some minuteness the fees that may be exacted from clients.

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judge is permitted to appoint an attorney to defend him. However, in the preliminary examination (*Voruntersuchung*) which often precedes the main trial and is obligatory in certain cases, the counsel plays a rather unimportant *rôle*, not being allowed to take part in the examination except with his advice.

It is a general principle of German jurisprudence that no one can be arrested or kept in detention except by order of a judge, unless the offender be caught in the act. In either case he must be taken before the judge for a preliminary hearing. Upon the conclusion of the preliminary investigation, the record is sent to the public prosecutor, who in turn, lays it before the court, when the main proceeding (*Hauptverhandlung*) begins. Usually the trial must take place in the district in which the crime was committed. An extraordinary summary procedure was not provided for in the imperial code, as it was thought that the elasticity of the ordinary procedure was sufficient to cover all legal controversies. A special procedure, however, is allowed in a few cases, such as controversies over legal instruments and commercial paper, divorce cases and pecuniary claims. A summary procedure is also allowed for the trial of certain minor offences, the judge being allowed to sit without the aid of assessors; but the punishment which may be inflicted in such cases is limited to a fine of 100 marks and imprisonment for a period of six weeks. Where the trial is by jury, a majority of two-thirds is necessary for conviction. The judge is allowed to instruct the jury on the questions of law involved, but is not permitted to discuss questions of fact or to dwell upon the value of the evidence.[1] The verdict found by the jury takes the form of answers to certain questions put to it, and the court as a whole pronounces the offender guilty or not guilty.

Finally, the imperial law has left to the states a considerable sphere of police administration for which a special procedure is necessary. Some of the states still adhere to the view that criminal penalties may be inflicted only by the regular courts. Others, under the influence of the old law, allow the police officials to inflict penalties.[2] In exercising this power the states are restricted by the criminal code in three particulars: first, the imprison-

[1] Strafprozessordnung, sec. 300. [2] Meyer, Staatsrecht, I, 455.

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ment must be provisional only, the accused being allowed to demand a judicial trial within one week; second, the police jurisdiction extends only to misdemeanors; third, the punishment which may be inflicted by the police is limited to fourteen days' imprisonment, fine, and confiscation of the property involved. In such cases, appeal is allowed to any superior police or administrative authority, and finally to the judicial courts.[1] The advantage claimed for this procedure is that it saves time and reduces the cost, while the right of appeal protects the accused from arbitrary action by the police authorities.

The punishments recognized by the criminal code are (1) death, which is the penalty for murder or attempted murder upon the Emperor or the *Landesherren;* (2) imprisonment in the house of correction (*Zuchthaus*), in jail (*Gefängnis*), in a fortress, or in a prison; (3) fine; (4) reprimand; (5) loss of civil rights; (6) police oversight; and (7) confiscation. Criminal offenses are classified by the code as (1) felonies (*Verbrechen*), the punishment of which is death, or imprisonment for not less than five years; (2) crimes (*Vergehen*) punishable by imprisonment for a period not exceeding five years, or fine of not less than 150 marks; (3) misdemeanors (*Uebertretungen*), punishable by short imprisonment or small fine.

During the debate on the adoption of the criminal code considerable opposition was made to the proposition for allowing appeals (*Rechtsmittel*) from the judgments of criminal courts. The government proposed to do away with appeals altogether, as being incompatible with oral procedure. It was argued that it is only the record that is sent up to the appellate court for examination, and that appellate judges are not more infallible than others. The friends of appeal, however, carried the day. There are three forms of appeal, of which the first is the so-called *Berufung*, an appeal upon both law and fact, securing to the appellant a new trial before a higher court. In criminal proceedings this form of appeal is allowed only from the decisions of the *Schöffen* courts. The second is the *Revision*, which corresponds to the French *cassation*. It is restricted to questions of law, and secures the quashing of the decision of the lower court and the

[1] Strafprozessordnung, secs. 453–459.

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remission of the case back for a rehearing. It is allowed in the interest of legal unity, and applies only to decisions of the state courts and the jury courts.[1] The third form is the *Beschwerde*, which is an appeal from the ruling of the judge. It is simple in form, unlimited as to time, and is decided informally and rapidly.

3. THE JUDICIAL POWER.

Under this head it is proposed to examine several questions which have been raised with regard to the power of the German courts to inquire into the validity of ordinances and statutes (*Prüfungsrecht*) which have not been issued or enacted according to legal forms.

The simplest hypothetical case of the kind is that in which the courts are called upon to apply a statute or ordinance which has not been *promulgated* or *published* in accordance with the forms prescribed by the constitution. On this point the authorities are practically unanimous that the courts do possess the power in question, and that they are not bound to give effect to any informal command of the prince or to a resolution of the legislature which lacks the outward marks of a properly enacted law.

In the next place, the question has been raised: May the judge go behind the formalities of publication and inquire whether an ordinance which he is called upon to apply was within the constitutional or legal competency of the authority issuing it, and if not, whether it is to be considered as binding upon him?[2] On this point some of the commentators, notably Linde, Stahl, Zöpfl, Weber, and Bischof, hold that the power of the judge is restricted to the simple inquiry as to whether the ordinance was duly promulgated by the executive and countersigned by the proper responsible minister as required by law; that is, whether all the formalities of issue have been complied with. According to this view, whether there is a material conflict between the ordinance and some higher law, or whether the issuing authority exceeded

[1] Strafprozessordnung, sec. 376.

[2] This question may frequently arise, since a number of the German constitutions empower the executive to issue ordinances necessary for the maintenance of the public safety, or for meeting unusual emergencies when the Chambers are not in session

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its powers, is not a matter of inquiry for the judge.[1] The majority of the commentators, however, and the more distinguished of them, claim for the judge the right, when not expressly prohibited by law, to go behind the formalities of publication and inquire whether the ordinance was within the legal competency of the authority issuing it and in harmony with existing law, and to refuse to be bound by it if it falls short of these requirements.[2] This view was expressed by the German Bar Association in a resolution unanimously adopted August 30, 1862. Furthermore, the practice of the courts in Saxony, Wurtemberg, Bavaria, and Electoral Hesse, of the court of appeals at Lubeck, and the Imperial Court at Leipsic, has been to recognize the right of the judge in the premises.[3] But the opposite view is the law in some of the German states, among them Prussia, whose constitution (Art. 106) declares that inquiry into the validity of properly promulgated royal ordinances belongs to no authority (*Behörde*) except the Chambers. In Prussia, therefore, and in other states where similar constitutional provisions exist, the judge must, as in the days of absolutism, when no distinction was made between *Gesetz* and *Verordnung*, be bound by every duly promulgated ordinance, without inquiry as to whether it is a transgression of the executive power or an encroachment upon the legislative powers. In Prussia the only essential to the validity of an ordinance, so far as the courts are concerned, is that it shall be promulgated (*bekanntgemacht*) according to the forms prescribed by law, after which the judicial power of inquiry is restricted to the determination of whether it bears the outward marks of authentication and countersignature by the proper minister.[4]

[1] Schulze, Das preussische Staatsrecht, Bd. II, S. 245; Meyer, Staatsrecht, sec. 175.

[2] Laband, for example (Staatsrecht, I, 581), says: "The validity of an ordinance is not dependent upon the validity of its formal enactment. It must in addition be legal, and in every case in which the application of an ordinance is involved the inquiry must be made whether it was authorized by law."

[3] Thus we find the court of appeals at Dresden in 1872 declaring a royal Saxon ordinance to be in conflict with existing law, in consequence of which it was abrogated. See Laband, *op. cit.*, I, 596, and Entscheidungen in civil Sachen (Reichsgericht), Bd. 13, S. 321; Bd. 24, S. 3.

[4] Meyer, Deutsches Staatsrecht (ed. of 1878), S. 443; Von Rönne, Preuss. Staatsrecht, sec. 49.

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A somewhat similar but more important question is this: May the judge, in the absence of constitutional authority, inquire whether that which is published as statute law (*Gesetz*) is really law; that is, whether it has been passed according to all the requirements of the constitution, *e.g.*, has received the assent of the diet in a state where that is required?[1] Here again the authorities differ. A few hold, as in the case of ordinances, that the judicial power of inquiry is restricted to the formalities of promulgation, behind which the judge may not go. According to this opinion, it is the duty of the executive to ascertain whether that which is laid before him for promulgation as law has been duly enacted in accordance with the requirements of the constitution, and when he has promulgated it its validity is thereby established and it is henceforth binding upon the judge. Among those who hold to this view is the scholarly commentator, Laband, although he takes the opposite ground when it is only an ordinance instead of a statute that is involved. With other German jurists, he distinguishes between the *formal* and the *material* content of law, and holds that a statute which bears the outward formal marks of a properly enacted law is formally valid, and as such is binding upon the judge, even though as to its material content it may be irreconcilable with the constitution. That is to say, it may be *formally* valid and *materially* invalid; but the material invalidity is not a proper subject for judicial inquiry.[2] The majority of the commentators, however, hold here, as in the case of ordinances, that it is the duty of the judge to go behind the formal act of publication, to inquire whether the law has been properly enacted, and to refuse to be bound by it if it has not been so enacted.[3] This follows, they say, as a necessary consequence of the position of the judge, who is subject not to the executive but to the laws, and valid laws at that. Among those who hold to this view are Bluntschli, von Mohl, Gneist, Planck, and Windscheid. The power of the judge in cases of this kind was

[1] The German states differ concerning the participation of the diets in legislation. Some, among them Prussia, Saxony, and Wurtemberg, require the assent of the diet to all laws; while others, among them Bavaria and Baden, require such assent only to laws affecting the liberty and property of the subject.

[2] Staatsrecht des deutschen Reichs, Bd. I, S. 548.

[3] Schulze, Das preussische Staatsrecht, Bd. II, S. 242.

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made the subject of a lucid and scholarly monograph by Professor Gneist in 1863. The question was examined in connection with the English and American practice, and the various objections which were raised against the right of the judge in the premises were answered.[1] Gneist's conclusions, however, are not to be taken as the expression of an opinion in favor of the American doctrine of the right of the judge to refuse to be bound by a statute whose material content is irreconcilable with some principle or provision of the constitution. That is quite another question. A more recent opinion is that of the jurist Windscheid, who insists that the right claimed for the judge does not elevate him above the state, but only above a will which purports to be the will of the state, but which in fact is not.[2] Whatever may be the abstract opinions of the learned jurists and professors on the subject, the law in a number of the German states, among them Prussia, denies to the judge the right in question. In Prussia the inhibition upon the power of the judge to inquire into the validity of ordinances applies also in the case of statutes.

Of particular interest to students of American constitutional law is the question as to the power of the judge over statutes whose material content is in conflict with some provision of the constitution. There are several hypothetical cases to be considered under this head. In the first place, a state statute may conflict with some provision of the state constitution. The right of the judge to refuse to be bound by such a statute was first made the subject of a lively discussion on the continent of Europe by two noted Belgian jurists, Faider and Verhagen, about the middle of the last century. This controversy had the effect of turning the attention of German writers to the subject, and in 1860 Robert von Mohl published an essay entitled "Unconstitutional Laws," in which he affirmed the right of the judge to declare void an unconstitutional law, according to the American practice.[3] On this point he said: "If the question arises in a legal controversy whether a provision of the constitution or a

[1] The title of Gneist's monograph is: Soll der Richter auch über die Frage zu befinden haben ob ein Gesetz verfassungsm ssig zu Stande gekommen?

[2] Lehrbuch des Pandektenrechts, Bd. I, sec. 14.

[3] Strafrecht, Völkerrecht und Politik, Bd. I, S. 386-395.

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law which is contrary to the constitution shall be applied in the settlement of the controversy, the court must, according to the principles of logic and constitutional law, give the preference to the higher law."[1] Such a course, von Mohl held, is not an encroachment upon the sphere of the legislature, but is simply a declaration of the judge that in view of a conflict between the statute and a higher law the former can find no application. As far as I have been able to discover, the only other German jurist of distinction who has come out squarely in favor of the American doctrine is the commentator Planck.[2] Three years after the appearance of von Mohl's essay, Gneist published the famous monograph to which reference was made above, in which he analyzed the question in all its bearings. It is frequently asserted that Gneist, who was acquainted with American constitutional law, was an advocate of the American doctrine with regard to the right of the judge to declare a law null and void on the ground of unconstitutionality, but a careful reading of his monograph does not seem to justify the claim put forward by his American admirers. The question which he asked and answered affirmatively was: "*Soll der Richter auch über die Frage zu befinden haben ob ein Gesetz verfassungsmässig zu Stande gekommen?*" But the context shows that what he meant by *Verfassungsmässigkeit* was enactment according to the methods prescribed by the constitution, such as the assent of the diet by the prescribed majority, *etc.*, and not harmony between the material content of the statute and the constitution. On page 6 of his essay he asks whether the judge has the right to go further than the mere ascertainment of the proper passage of the law and inquire whether it is contrary to some express principle (*ausgesprochenes Grundsatz*) in the constitution. This is emphatically answered in the negative on page 23 of the essay. After referring to the American practice and to the peculiar conditions which account for it, he concludes: "Such an overruling power in the supreme court is assuredly not at all suited to the German judicial system."[3]

[1] Strafrecht, Völkerrecht und Politik, Bd., I, p. 78.

[2] Jahrbuch für die Dogmatik des heutigen römischen und deutschen Privatrechts, Bd. IX, S. 288.

[3] Staatsrecht, I, S. 548.

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Gneist's view is held by Laband, Bluntschli,[1] von Rönne,[2] Meyer,[3] and others. Furthermore, this is the law of most of the German states, among them Prussia.[4] But in those states where constitutional inhibitions do not exist the courts have occasionally asserted the right in question. Thus in 1875 the Hanseatic court of appeals held void a law of Bremen which violated a provision of the constitution. The court declared that the judge was bound to apply the laws, and that if a conflict existed between the law which he was called upon to apply and a higher law, the latter must govern.[5] This doctrine, however, was overruled a few years later (1883) by the Imperial Court, in a decision which held that the judge exceeded his power in presuming to disregard a law which in his opinion was in conflict with the constitution.[6]

The second hypothetical case under the present head is that in which a state statute conflicts with an imperial statute, or with the imperial constitution. On this question the authorities are unanimous that the judge must give the preference to the imperial law.[7] The supremacy of imperial law over state law seems to be implied in Article II of the imperial constitution, and the courts have proceeded on that principle. Thus it was held by the Imperial Court in 1887 that an income-tax law of Prussia was contrary to the clause of the imperial constitution which prohibited double taxation, and was therefore void.[8]

The final hypothetical case is that in which an imperial law conflicts with some provision of the imperial constitution. Here

[1] Das allgemeine Staatsrecht, S. 135. Bluntschli says: "The courts are not empowered to attack the content of a law and by their authority declare it invalid."

[2] Das preussische Staatsrecht, I, 308–309. Von Rönne says: "It belongs to the courts to inquire in every case whether what purports to be law possesses the required constitutional form, or whether it has been superseded, restricted, or changed by a later law. On the other hand, . . . it lies beyond their competence to inquire whether a law or ordinance properly enacted or issued is void for want of constitutionality. That is a function of the Chambers."

[3] Deutsches Staatsrecht, S. 442.

[4] Verfassungsurkunde, art. 106.

[5] Garbarde *v.* Bremen, Seufferts Archiv, Bd. 23, No. 101.

[6] K. et al. *v.* Dyke Board of Niedervieland, Reichsg. Entscheidungen in civil Sachen, Bd. IX, S. 233.

[7] Laband, II, 596; Meyer, 444; von Rönne, sec. 63.

[8] Enstcheidungen in civil Sachen, Bd. 19, S. 176.

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again the opinions of the jurists differ, some holding that the *Bundesrath* is the proper organ for the settlement of all cases of doubt concerning the irreconcilability of statutes and the imperial constitution.[1] They rely chiefly on Article XIX of the imperial constitution, which empowers the *Bundesrath* to compel the states to fulfil their constitutional duties. So far the courts have proceeded on the theory that they have no such power, although they admit that the question is still an open one. The Imperial Court, in a decision of March 28, 1889, expressed this view, but added that the weight of authority was in favor of the right of the judge in such cases.[2] However, it would seem that the court has not yet shown the courage of its convictions, although the opportunity has frequently been afforded.

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[1] Meyer, Deutsches Staatsrecht, S. 444.

[2] Entscheidungen in civil Sachen, Bd. 24, S. 3. The opinion of the court concluded as follows: "Allerdings ist die Frage ob ein richterliches Prüfungsrecht in Ansehung der Vermässigkeit von Bundes- bezw. Reichsgesetzen besteht, bis heute streitig wenn schon Solche uberwiegend bejaht wird."

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REVIEWS.

Imperialism: a Study. By J. A. HOBSON. New York, James POTT & Co., 1902. — viii., 400, pp.

Mr. Hobson's study of the forces and motives of imperialism is not a piece of original investigation but an examination of the tendencies and principles, political and economic, underlying the present movement in world politics. While, therefore, no new material is adduced and while the principles considered are fairly familiar, the grouping of considerations is nevertheless very original and constitutes a most striking representation of the anti-imperialist position, supported by a telling array of arguments. Many new points of view are suggested and the significance and mutual relations of world-wide movements are explained.

Mr. Hobson begins by distinguishing imperialism from nationalism, internationalism and colonialism. He especially dwells upon the difference between colonial movements, through which the population of a nation expands over new territory, and the modern imperialism, in which there is very little displacement of population, and in which the attempt is made to establish political control for economic purposes. The economic basis of contemporary imperialism is the development of natural resources through investment rather than through commerce. The author holds that imperialism represents an *extensive* economic policy, and he believes that national energies would be better spent in the *intensive* culture of national resources. In this he holds the same view of the essence of civilizing activities as does Ratzenhofer — the constant improvement of the basis of economic life, as opposed to the mere seizing upon resources for the purpose of rapid exploitation (*Raubwirtschaft*). It must, however, be said that the great Austrian sociologist holds also that a civilizing policy is further characterized by the creation of a constantly increasing surplus over consumption. From this point of view the question would be whether a rational exploitation of the tropics by European capital would not produce a far greater surplus than a more intensive culture of European economic resources. Mr. Hobson holds, in Chapter VI, Part I, that it would be far better to effect a change in the distribution of wealth so as to enable the poorer classes to absorb the surplus wealth which is now seeking an outlet in foreign investment. It may be an open question

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as to whether better social service could be obtained by distinctly improving the income of the working classes than by using the capital for the acquisition of tropical products; or in other words, whether society would benefit more by paying its working classes better than by purchasing products which the national territory cannot produce. The author admits that we need tropical products in ever-increasing quantities, and even that we are justified in politically directing the development of the tropics. In Chapter II, of Part II, he seems to abandon the argument of the sufficiency of mere intensive development of national resources. This apparent inconsistency does not, however, detract from the value of emphasizing the prime importance of intensive development and the danger of relying instead upon streams of wealth pouring in from dependent regions.

Politically, the author considers the most characteristic feature of modern imperialism to be that it is competitive, and that, while the various empires are avowedly executing a trust for civilization, they are, in fact, engaged in an intense competition for national wealth and power. This results in a serious set-back to the efforts to strengthen the feeling of common interests coextensive with humanity. The author seems to think that the economic basis of imperialism — the development of backward regions — would be justifiable were it not for the fact that a class of international capitalists who are impatient to make quick profits are pushing the European states into selfish and reckless action. The natural growth of economic interests is thus anticipated and the arts of diplomacy and politics are used to preempt fields for investment and to create an artificial control over wide territories which can be developed only very gradually. The two most serious consequences of this reckless haste to secure fields for investment are the threatened enslavement of the black race and the break-up of Oriental civilizations. The imperialists are unwilling to wait for the operation of the natural causes which are transforming the negro tribes of Africa into a working population. They advocate such means as taxation, destruction of tribal bonds, and the formation of artificial "locations" for the purpose of forcing the growth of a labor supply in Africa, to the ineffable injury of the black race. It admits of no doubt that the world is in danger of having to fight the slavery issue over again. It would seem that the expansion of national societies to a world-state basis is bringing with it a recrudescence of slavery in substance, though not in form, and that an attempt is being made to reduce the black race in Africa to absolute servile dependence upon white employers. As the imperialist movement in Africa shows a

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great disregard of the rights of the natives, so in the Orient it has interfered most recklessly with long-established civilizations. Outside of the political order introduced by Britain into India, the author believes that the only consequence of Western interference in the Orient is the confusing of the social customs and ideals of the East and the ruining of Oriental art by the introduction of cheap processes of manufacture.

The author has carefully scrutinized the facts upon which his argument is based. It is a matter for regret that he did not develop more fully his evidence as to the existence of an international group of capitalists who mould public opinion and direct public action in order to be able to profit by the fluctuations of the stock market. These forces and manipulations deserve most careful and detailed study. A few minor points are subject to criticism. On page 307 the author seems to imply that Alexander the Great had actually established his *peace* throughout India; and the reference to the zemindary system on page 314 is misleading.

Mr. Hobson has effectively pointed out the most serious dangers inherent in imperialism, — a reckless exploitation threatening the natives and civilizations of dependent territories, and the creation of a parasite class — in fact, even of general parasitism in the European countries. His condemnation, though often caustic, is not extreme, and though his views are plainly colored by the especially reckless manifestation of imperialism which he himself witnessed in South Africa, his views must be taken account of in any constructive policy of the period. While he admits the theoretical justification of a sane imperialism, he seems to despair utterly of its realization as long as nations have no other judge but themselves in the execution of the "trust for civilization." By those who admit that imperialism is a natural and inevitable movement, everything that the author has said should be considered in an attempt to establish a true civilizing policy of colonial administration.

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Städteverwaltung im römischen Kaiserreiche. By W. LIEBENAM. Leipzig, Duncker & Humblot, 1900. — xii, 577 pp.

A hasty examination of this work would yield the impression that its field was narrower than its title; for not less than four-fifths of the volume is ostensibly devoted to municipal receipts and expenditures

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(book i), and to the administration of municipal property (book ii). The first half of the second book, however, deals with the constitution of the municipalities, and under the headings "expenditures" and "administration of property" the author contrives to give a fairly complete view of the various activities of Roman municipal government. A third book deals with the relation between the empire and the cities. In reality, therefore, the field of Liebenam's volume is wider than the title he has given it. His subject is not merely municipal administration, but local government in the Roman Empire.

As in his volume on Roman associations[1] the author deals succinctly with matters well settled by previous investigation and passes rapidly over controversies which can hardly be settled without more knowledge than we now command, while he enlarges on those topics on which new light has been thrown by recently discovered epigraphic material. He gives everywhere full references to the German, French and Italian literature, and he is well acquainted with the English literature also. In notes, some of which comprise several solid pages of small type, he has collated the Latin and Greek inscriptions bearing upon special topics, adding references to books and journals in which the several inscriptions are explained; and in an appendix of twenty-six pages he gives us a similar compilation of inscriptions and references regarding every municipal office in the Greek cities of the empire. It is needless to insist on the value of such labors to other investigators; but it may be remarked that the bulk of these notes is so great that the ordinary reader, who confines himself to the text, will gain a comprehensive and fairly clear view of Roman city government in something less than two hundred pages.

The author's interpretation of the sources, and particularly of the inscriptions, is beyond the control of any but specialists in the same field; but the reviewer has noted a few inaccuracies. It may well be true that the vanity of municipal magistrates gave occasion for satire (p. 237); but the citation from Tertullian (Ad Nationes, 2, 8), in which he ridicules some of the most local of the "gentile" gods as "councilmen-gods of the several towns, whose glory is bounded by the town walls," is hardly in point. Nor would any lawyer, Roman or English, interpret Papinian's statement (Dig. 50, 1, 14), that the town is understood to know what its officers know, as signifying that measures taken by the authorities were to be made known to the citizens (p. 319). As in the previous case, the author's statement is intrinsically probable,

[1] Geschichte des römischen Vereinswesen. Reviewed in POLITICAL SCIENCE QUARTERLY, VII, 568.

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but the authority cited is irrelevant. As regards legal questions, there is, to a lawyer, an appreciable haziness about much of Liebenam's discussion, and the above passage from Papinian is not the only legal text which he has misconstrued.

The student of municipal finance should be warned by the reviewer, as he is warned by the author, that the sources do not enable us to draw up anything like an annual budget for any municipality in the empire. It is not even possible, as he laments, to give as clear a picture of the finances of any city, in the imperial period, as Böckh, in his classic work, has given of the finances of Athens. Nevertheless, the student of finance will do well to read at least the author's succinct comparison between the income and expenditures of the ancient municipalities and those of modern cities (pp. 165-173). It is of especial interest, further, to see how largely the cities of the early empire were aided by voluntary gifts and bequests; and we can readily understand that the absorption of benefactions by the Christian church was at least one of the causes of the disorder of municipal finances in the fourth and fifth centuries (p. 535).

The general student of history will read with most interest the last hundred pages of this volume (book iii.), in which the author devotes especial attention to the degree of self-government enjoyed by the cities under Roman sovereignty. From the Social War to the close of the first century of our era, the cities seem to have managed their own affairs with little interference; but at the close of the first century there begins, sporadically at the outset, a central regulation of municipal finances which expands, in the later empire, into central regulation of the entire city government. The author thinks that the central government was constrained to take the first steps in this direction because of frequent maladministration in the cities; but the consequences were disastrous, not to the cities only, but also to the empire itself.

> The imperial machinery, externally regarded, was indeed in active operation, but rulers and ruled confronted one another in alienation and indifference, since the citizen was no longer called to aid in the government of the empire. The unconcealed egoism of the state, which came in contact with its subjects simply as bureaucracy and viewed questions vital to them exclusively from the fiscal angle, destroyed all serious care for its welfare; . . . only the officials had any real interest in the maintenance of the unity of the empire. . . . The government, so far from showing any capacity to arrest the economic decay of the empire, hastened it by the continual imposition of new burdens. It is no wonder that in so many regions the triumph of the German peoples over Rome was hailed with undisguised gladness as a redemption from endless suffering [pp. 530, 531].

MUNROE SMITH.

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The Correspondence of the Colonial Governors of Rhode Island, 1723–1775. Published by the National Society of the Colonial Dames of America in the State of Rhode Island and Providence Plantations. Edited by GERTRUDE SELWYN KIMBALL. 2 vols. Boston and New York, Houghton, Mifflin & Co., 1902–03. — lix, 434; xxiii, 494 pp.

In recent historical literature, Rhode Island has occupied a relatively important position. Richman's *Rhode Island: Its Making and Its Meaning*; Field's *Rhode Island at the End of the Century;* Stokes' *Finances and Administration of Providence*, and Miss Gertrude S. Kimball's *Correspondence of the Colonial Governors of Rhode Island*, 1723–1775, the subject of this sketch, have all appeared within a year and a half. To this list may be added in anticipation S. S. Rider's *Constitutional History of Rhode Island* and the *William Harris Papers*, as a volume of "Collections" of the Rhode Island Historical Society, both soon to be published.

The two volumes edited by Miss Kimball are an encouraging sign of the times. Everyone must realize that there are especial reasons why the patriotic societies should undertake the work of historical research, since they derive a great part of their significance from the general interest in American history. In the past, many of the undertakings have been confined to the fields of antiquarian and genealogical study. Accordingly there is occasion for rejoicing when one of these societies performs a work of such thorough scholarship as the book under reviews.

The executive correspondence of Rhode Island, from 1723 to 1775, is preserved in the office of the secretary of state in eleven folio volumes. It was purposed to include in the *Correspondence* all of this series which had not been printed by Bartlett in the *Colonial Records*, together with a few letters chosen from miscellaneous sources. It is a matter for regret that the letters before published were not included in this work. There is, however, appended a chronological list of those printed in the Rhode Island Colonial Records.

The introduction gives an analysis of the letters and sketches of the successive governors and their administrations. While the governor in Rhode Island was the intermediary between the king and the colony, his interests were with the colony. Hence his correspondence with the home government was confined almost exclusively to "imperial" questions. It is just herein that the chief value of the collection lies, — in the light which it throws on the working of the British imperial policy of the eighteenth century.

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The greater number of the letters are the correspondence which passed between the agents of the colony in England, Richard Partridge and Joseph Sherwood, and the colony officials. Trade, currency and imperial defence are the subjects especially under discussion. Of the Navigation Acts comparatively little is said except to voice some complaint from England of their infraction. The passage of the Sugar Act was vigorously opposed as "the levying of a subsidy upon a free people without their knowledge, against their consent." In his letters Partridge states the whole case against taxation without representation as clearly as it was put in the colonies a generation later. The Iron Act was likewise a cause of solicitude, although the event proved that it did not affect Rhode Island at all. When the surveyor-general of the customs sought to exercise his authority by the appointment of a searcher in the colony, the local officials refused to administer the oath of office. The appointment of a judge of vice-admiralty and a naval officer was branded as a direct violation of chartered rights.

Perhaps nowhere is the weakness of the British imperial policy of the time shown more clearly than in its attempts to deal with the problem of colonial defence. Throughout the period of the French wars the subject is constantly urged upon the home government by the colony, but lack of adequate plans, of appropriations, and of energetic officials combined to defeat any efficient policy. The zeal of the colony for its own defence is sharply contrasted with its exasperating indifference when the question of contributing to foreign expenditures arose. Particularly in King George's War were repeated appeals for assistance by the neighboring royal officials met with many excuses but with few men. In the last French war a more ready response may be noted.

Like Massachusetts, Rhode Island yielded to the paper money temptation, but, unlike her neighbor, she failed to rise above it. The currency issue became a predominant one in local politics. The rumored intention of Parliament to legislate in restraint of paper money and the successive steps by which the measure became a law were faithfully reported by the agent, to the serious discomfort of the dominant party in the colony.

The boundary controversy, which had its imperial aspect in an appeal to England, occupied much of the agents' attention down to its final settlement in 1746. Once only does purely local politics claim a share in these pages. This is in a few documents relating to the Ward-Hopkins feud just before the Revolution.

The editorial work throughout these volumes is good. There is a

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good analytical table of contents, but the index, though full, shows many signs of haste. The annotations are exceedingly well done, and throw light on many obscure allusions. Taken altogether, the work reflects much credit upon the editor and upon the society which publishes it.

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The Aaron Burr Conspiracy. By WALTER FLAVIUS MCCALEB, New York, Dodd, Mead & Co., 1903. — xix, 377 pp.

This is the latest and most scholarly contribution to a puzzling and apparently much misunderstood episode of American history. Many of the facts here presented are drawn from original and hitherto unused sources which the author discovered in the Spanish archives at Mexico City, the American archives at Washington, and the Spanish records at San Antonio. The conclusions which he reaches with regard to the nature of the conspiracy differ in important respects from the usual view of historians, which is based chiefly upon Burr's correspondence with Merry and Yrujo, the ministers of Great Britain and Spain respectively, to whom he ostensibly disclosed his willingness to serve as the instrument for effecting the separation of the disaffected West from the Union. Dr. McCaleb believes that he has found sufficient evidence to justify the view that Burr's disclosures to Merry and Yrujo were designed to deceive those ministers. Burr's real designs, according to the author, were against the Spanish possessions in the southwest, and in order to secure funds for this undertaking he represented to Merry and Yrujo that disaffection was rife in that section and that with proper leadership it could be induced to separate from the Union. Believing that Great Britain and Spain would lend ready ears to any project which looked to the disruption of the Republic, Burr proposed to take the initiative in bringing about the secession of the West, and asked that British and Spanish subsidies be placed at his disposal to aid in carrying out the scheme. His real purpose, however, was to invade the Spanish dominions in the southwest. The author characterizes Burr's correspondence with the British and Spanish ministers as a gigantic piece of imposture, intended to hoodwink them into supplying him with funds for quite another purpose than the disruption of the Union. This correspondence, therefore, upon which Henry Adams and others have chiefly relied for proof of Burr's treasonable designs, throws no light upon the real nature of the conspiracy except in a negative way. The secession

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contingent in the West, the author thinks, was too inconsiderable to command notice. As to prominent characters involved in the affair, he expresses the view that Jackson was throughout absolutely loyal, but General Wilkinson he characterizes as a shameless villain and an imposter without a parallel in our history. His analysis of the trial at Richmond is lucid and critical. The acquittal of Burr, he says, followed as a matter of course, no other result being possible in view of our law of treason. Accompanying the book are two maps prepared by Burr, showing the lower region of the Mississippi and a survey of the gulf coast from New Orleans to Campeche.

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Heredity and Social Progress. By SIMON N. PATTEN. New York, The Macmillan Company, 1903. — 214 pp.

To a biologist, the first reading of a book like the volume under review gives the impression that a new humorist of a somewhat novel type has arisen. A second reading arouses intense indignation, but reflection finally shows that an earnest and well-meant but unsuccessful attempt has been made to apply the terms and principles of a branch of science with which the author is unfamiliar, to the elucidation of phenomena in another branch with which he is equally unfamiliar. To a biologist, the result, in the present case, is confusion followed by amusement, and to a psychologist the result may well be similar.

At the outset the author directs attention, in an interesting and novel statement of the case, to the "social surplus" and its relation to heredity, and propounds the question: "How is the social surplus transformed into permanent conditions and mental traits?" The question is answered in the first three chapters in an equally interesting and novel way. The principle of inheritance of acquired characters is applied as follows (pp. 23 and 32):

> When, for example, a bricklayer has improved his condition by the acquired characters of his occupation, and has, as a consequence, bettered the position of his children, they tend to become clerks and mechanics. . . . It is well known that the children of any class move into the class above them when the economic welfare of parents is so improved that children have more food, shelter, and leisure.
>
> The order of the change from acquired to natural characters is: first, the production of surplus energy through acquired characters; second, the expression of this energy in the secondary characters; third, the discovery of some use for these secondary characters in which all the species

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can share, and then the movement of the species into the environment where these secondary characters are necessary and hence primary. [P. 32.]

In other words, the surplus created by an individual gives opportunity for educating children to a larger sphere of usefulness, which they make good by migration to appropriate environments. Character arises from the increased energies, and with this a demand for greater opportunity. Struggle then ensues with those already adjusted in the new environment, from which results the elimination of the unfit. Elimination, therefore, tends to keep the race to its greatest efficiency. Emotion, the author believes, here plays a large part in changing the characters of the survivors, and this because

> emotions have no structure or mechanism of their own by which they are expressed. They use structure created for other ends. Emotions are thus primarily destructive, create waste products, and force organisms back to a more primitive state with fewer structural adjustments to the environment. [P. 48.]

With his chapter on Emotion, the author leaves his wonted territory and plunges into an unknown wilderness of biology. Here he finds a principle which he believes helps him to explain how emotions reduce the organism to a simple state. This principle is the reduction of chromatin in the nucleus during the maturation of the germ cells, a process which, as is well known, results in the halving of certain characteristic structures of the cell. After making numerous statements which are not true concerning reduction, as for example, "A polar body would then be the centrosome [*sic*] of an earlier division retained by the tension of the envelope" (p. 50), or "Reduction always precedes regeneration. . . . If the changes in the cells which create the new part could be observed, reductions would be found similar to those that take place when polar bodies are expelled" (p. 52), *etc.*, he finally concludes that emotions are also due to reductions of like nature. "The first effect of an emotion, then, would be a reduction ending in the expulsion of polar bodies [*sic*] and the reduction of the cells to a simple condition." We wonder why reduction in male sex-cells was not also introduced; possibly because here there is no elimination of any part, all material becoming functional in germinal products; reduction, however, is precisely the same as in egg cells.

It is a simple matter for the author to pass from this conclusion to

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another, equally impossible and delightfully illogical, that the brain and nerve centres are composed of germ cells. "The responsiveness of this cell (*i.e.*, germ cell) is greater than that of any of the somatic cells derived from it" (probably because of its great generalization, although the statement is not strictly true). "It must therefore be thought of as the seat or necessary accompaniment of consciousness" (p. 76). Equally logical is it to say that the germ cells are the seat of digestion, of respiration, or of motion, *etc.*

At this point another biological bogey appears. The centrosomes of a dividing cell — two centres of kinetic activity, through whose agency, in part, the cell divides — are used to explain the constancy of consciousness, which, he believes, is due to katabolic processes of the cell. Katabolism, however, alternates with anabolism, he argues, and therefore consciousness would be intermittent were there no remedy. This is provided by the two centrosomes.

> Two active centres tend to disrupt the cell, and for this evil the only remedy is the strengthening of the cell wall to resist the disrupting tendencies. The presence of two active centres while the cell divides tends to confirm the foregoing analysis of consciousness. [P. 76.]

Another conclusion which follows in the chapter on Sensation is that the brain is an ovary. The egg, growing rapidly, forms a fold, and, since the ovary is formed first as a fold, the fold which develops into the brain must also be an ovary, from which it follows that, the nerves "being sex-products, they strive to break through the envelope and free themselves. . . . Where growth is active, the envelope yields before the growing nerve, until an equilibrium is obtained, with the result that a new organ is formed" (p 83). A tooth, for example, has such an origin: "The nerve, in its effort to emit its sex-products, presses against the skin and finally breaks through. The skin hardens over the injured part and a tooth results" (p. 83). Comment on statements like these is unnecessary.

Detailed consideration of the remainder of the work is hardly warranted. Statement after statement is made which is inaccurate biologically, or incorrectly applied, and the conclusions which follow on Devolution, Inner Organs of Expression (the "vehicle," by the way, of "acquired characters"), Education and Reform, based as they are upon false biological reasoning, and confused by the mixing of terms with principles, are weak and unconvincing.

GARY N. CALKINS.

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La Crise Allemande de 1900–1902. Le Charbon, le Fer, et l'Acier. By ANDRÉ E. SAYOUS, Paris, Larose, 1902.

M. SAYOUS, already well known through his intelligent study of German Exchanges, and other contributions to the political economy of the day, has furnished us in *La Crise Allemande* a valuable collection of facts bearing on the operation and usefulness of German cartels, comptoirs, and other associations, whether of producers or of consumers, entered into with a view to eliminating some of the inconveniences that attend the free play of supply and demand. It is an interesting commentary on the views that prevailed at the beginning of last century; for the doctrine then propounded by the apostles of laissez-faire, that supply and demand furnished an admirable, natural, and even Providential method for adjusting prices and production, does not in the pages of M. Sayous's last book receive the honor even of a passing mention. The necessity of putting an end to the crises produced by this Providential plan has become so obvious that the question no longer is whether these crises can be eliminated, but only how the methods adopted to eliminate them can be improved or perfected. The study of the crises of 1900–1902 becomes therefore a study of the German cartel, and as such presents to Americans a useful analysis of ancient history — for the imperfect combination known as the cartel is already ancient history to us — and as such helps to confirm our convictions regarding the inevitableness of the more perfect concentration of industries with which we are already familiar in our own country. It is, of course, too much to expect of any form of industrial combination that it can eliminate crises altogether; but it is interesting to read the story of the part played by the German cartels during the last few years, if only to convince ourselves that partial combinations are perhaps likely to aggravate crises rather than to diminish them, and that nothing less than such a combination of producers, manufacturers and carriers as our Steel Trust presents can efficiently adjust production and regulate prices. It is clear, for example, that the Comptoir of Essen from 1900 to 1902 maintained the prices of coal in a manner ruinous to the steel industry; that at a time when the steel industry was clamoring for cheap coal, the comptoir stopped the sinking of new shafts (p. 153), and even exported coal at a lower price than that charged to the home industry (p. 154). That an article so vital to human needs as coal could be monopolized as it was by the Comptoir of Essen, is a fact that we have to confront in America as well as in Germany; and strange to say, the remedy of state ownership proposed by the Democratic party of

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the State of New York would seem to be of little avail in view of the fact that the state coal mines proved as greedy and regardless of public interests as the coal barons of Essen (p. 169). To this, however, it may be answered that coal mines worked in the interests of the Hohenzollerns can hardly be cited as against coal mines worked in the interests of an enlightened democracy; but then we have to bear in mind that the world has probably not yet seen a democracy sufficiently enlightened to watch and control the working of its departments so as to place them beyond the danger of official perfunctoriness on the one hand or the reach of individual greed on the other. However this may be, it is probable that the suggestions approved by the author as to the steps necessary to diminish the evils that arise from industrial combination are still inadequate. Publicity may prevent the exploitation of the *investing* public; it will hardly do much for the consumer; and the effort to check exportation below home prices by the establishment of counter premiums is difficult of practical realization.

M. Sayous' work adds another proof of the glaring fact that the European industrial system exposes Europe either to the periodic bankruptcy that attends the free play of supply and demand, or to the tyranny that attends industrial concentration. In our country the latter — kept in check by an ever possible though latent *potential* competition — has, up to the present time, kept us under the sway of what Mr. Ghent happily describes as a sort of "benevolent feudalism"; but some pertinently and disquietingly ask: How long will it remain benevolent?

M. Sayous's book will be read by Americans with something of the complacent satisfaction with which a convalescent reads of the symptoms and disorders that attend the disease from which he is himself recovering. Those political economists, however, who persist in maintaining that there is no such thing as general over-production, if they want to preserve their complacence, would better leave this interesting book severely alone; for if the over-production of 1900 to 1902 in Germany was not general in the fullest sense of the word, it was sufficiently so to justify the indictment against unlimited competition to which over-production gives rise. American experience would seem to emphasize the fact that the German cartel is not centralized enough to produce the full advantages of combination, and yet is powerful enough to accentuate economic crises — a condition of things out of which the completer combinations of our own country are likely to emerge and survive.

EDMOND KELLY.

PARIS, FRANCE.

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A History of Factory Legislation. By B. L. HUTCHINS and A. HARRISON, with a preface by Sidney Webb. London, P. S. King & Son, 1903. — xviii, 372 pp.

THE history of British factory legislation, with its extraordinary interest, has been treated in not a few books and in very numerous articles. Yet, as Mr. Sidney Webb remarks in his preface, the work of Miss Hutchins and Miss Harrison for the first time presents that history in complete and systematic form. The book covers a somewhat narrower field than that, for instance, of W. Cooke Taylor, but it covers that field more thoroughly. The writers largely omit those harrowing details regarding evil factory conditions on which Taylor and others have dwelt. They take these facts for granted, and confine themselves chiefly to a careful analysis of the various acts, to a summary of the procedure, in and out of Parliament, by which the passage of the bills was secured, and of the arguments concerning them, and to brief but illuminating comment on the new principles from time to time admitted into legislation.

In the main our authors have presented their material in purely historical form, with little expression of personal opinion. Their strong disposition in favor of government regulation however, crops out here and there, and is vigorously expressed in the concluding chapter. Indeed, the whole book may almost be considered a subtle but strong polemic in favor of still further legislation of greater uniformity, and of more adequate methods of enforcement especially as regards labor in small shops and in homes. Despite the pre-eminence which is very generally accorded to England in the protection of labor, the present writers feel that "an extraordinary timidity" has beset the entire movement. "We have never yet," they say, "made up our minds what we really mean by industrial legislation, or what we want from it."

The record of a hundred years seems fairly to bear out the latter opinion, though scarcely the former. The survey here presented shows clearly that the factory legislation of to-day has been attained by many slow and halting steps, with occasional retrogressions. No systematic view of the entire industrial field, with all its needs, appears ever to have entered the mind of any British legislator, still less a simple and consistent philosophy of state interference. Regulation was long confined to the textile trades, in spite of abundant evidence of great evils elsewhere; its extension to other industries took place only gradually and unsystematically, as public attention was drawn from time to time to particular abuses. From the beginning illogical distinctions between

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the factory and the workshop, and between classes of establishments within each category, have been maintained, and have been accompanied by largely unwarranted differences in the degree of regulation and in methods of enforcement.

Our authors also emphasize the hesitation with which statesmen and legislators have admitted the right of government to interfere with the "freedom" of the adult, — more particularly of the adult male, although since 1870 champions of "woman's rights" have often loudly protested on her behalf also, — to contract for the sale of his labor under any injurious conditions he may see fit, or may deem himself forced, to accept. The home, "the Englishman's castle," has also been defended from legislation, partly by appeal to exaggerated individualistic ideas, and has thus too often been turned into the sweater's den. The true conception, in the minds of Miss Hutchins and Miss Harrison, is that factory legislation is intended for the protection, not of individuals or classes, but of the health, vigor, intelligence, and prosperity of society as a whole. Against that object, they hold, no abstract notions of the right or the duty of the individual ought to stand. The condition of all labor is lowered by the competition of what Mr. Webb has dubbed the "parasitic trades," while the undermining of the vitality of those employed in these trades tends directly to weaken the entire working-class population.

Yet with all the criticism which these writers bring forward, it may well be conceived that British factory legislation is to-day more effective and more vital by reason of its method of growth, its reaching out of arms to meet each particular need, than it would have been if created out of hand on the basis of such general principles as are suggested. There is reason to fear that some of our American states which have borrowed factory laws whole from England or from sister states, have not fully understood, or very seriously meant, some of their provisions; the consequence is that these have become largely dead letters. Our factory acts have seldom if ever been the outgrowth of general popular agitation, as in Great Britain, and their enforcement therefore largely lacks the backing of a definite public sentiment. Nor, again, has practical experience dictated, to any such degree as in England, statutory details constantly more specific and more effective. Decade after decade British factory inspectors have pointed out how, by loopholes invisible to the ordinary observer, laws have been evaded or wholly nullified; and decade after decade more precise limitations have been added by Parliament to meet these evasions. The British have learned, too, the imperative need of efficient government inspection. What

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seems an unfortunate division of authority still exists in that the sanitary regulations for workshops are left to the enforcement of local authorities instead of the regular factory inspectors. But, generally speaking, the English factory laws are more stringent, and more rigidly enforced, than our own. An important point of superiority is the provision of special regulations, by statute or administrative ordinance, in trades shown to be peculiarly dangerous to health or safety. The best American factories are doubtless more comfortable and more sanitary than the best in England, but in others conditions prevail here that would not be tolerated across the ocean.

This book will reward the careful reading of American economic students and of those who seek to improve the condition of the working classes. It shows many lines of progress to be followed, and many errors to be avoided. It is much to be desired that similar detailed studies of factory legislation, with special reference to its effects, should be made for some of our leading states. The present work contains also an elaborate appendix, by Mr. George H. Wood, on the course of women's wages in the nineteenth century, particularly as affected by legal regulation. It is supplied also with an exhaustive bibliography and a very satisfactory index.

E. DANA DURAND.

WASHINGTON, D.C.

Domestic Service. By LUCY MAYNARD SALMON. Second Edition. New York, The Macmillan Company, 1901. — xxvii, 338 pp.

IN this work, the first edition of which appeared in 1897, and which is now reprinted with an additional chapter on domestic service in Europe, Professor Salmon has made a careful and extended study of a subject which has previously received no adequate recognition in historical or economic publications.

Her treatment falls into three main divisions. First comes an historical account of domestic service in the United States from the colonial period, with its convicts, indented white servants, "free willers," negroes, and Indians; through the period extending from the Revolution to 1850, when domestic service was performed chiefly by free native laborers at the North and by Negro slaves at the South; to the changes brought about during the middle of the last century by the enormous increase in immigration and by the abolition of slavery. This historical study, in which Professor Salmon has presented much interesting matter from early letters, laws, and other primary sources of informa-

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tion, forms an introduction to the central and most valuable part of her work, a description and discussion of domestic service in the United States at the present time.

The data for this study were secured by means of a series of schedules distributed through students at Vassar College among employers and employees in different parts of the country. The blanks filled out by the former gave facts concerning 2,545 servants, while over 700 domestic employees themselves made written reports. From these returns, collated by the Massachusetts Bureau of Statistics of Labor, fifty large tables were prepared, giving fairly representative facts concerning the geographical distribution and the nationality, the wages and hours of employment, the special privileges, and other economic and social advantages and disadvantages of domestic servants. The results of this investigation and additional information gained from the census of 1890 Professor Salmon presents and discusses with fairness and discrimination.

The remainder of the book, aside from the chapter on domestic service in Europe, is devoted to a theoretical discussion of the possible remedies for the widespread difficulties at present encountered in the attempt to secure efficient service. Professor Salmon considers this question in the light of her previous investigation as well as in connection with the general political, economic and social tendencies of the times, and reaches the conclusion that

> the problem is not so much how to improve the personal relationship between the employer and the employee as it is to decrease this relationship; not how to increase the number of household drudges, but to decrease the amount of household drudgery; not how to do more for domestics, but how to enable them to do more for themselves [p. 198].

These results are to be brought about through the development of tendencies already observable, particularly through an increased specialization in household work, part of it to be performed outside of the individual home, part to be done within the home by skilled laborers coming in for that purpose. The specialization of work and the abolition of restrictions which residence in the family of an employer entail, will combine to attract to much of this work a higher and more efficient class of laborers than it at present secures.

Household service, then, is to be revolutionized by the application of the same methods that have been successfully applied in practically all other branches of the industrial world. Professor Salmon advances but one remedy which may properly be regarded as doctrinaire. Her

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chapter devoted to Profit Sharing is the least satisfactory in the book. Its superficial character is indicated in the following quotation:

> It is usually assumed that the interests of the employer and those of the employee are antagonistic. The introduction of profit sharing could easily prove that this assumption in domestic service is wrong, as it has already made similar proof in other occupations [pp. 246, 247].

There is no apparent recognition of the elements of weakness in a system of profit sharing, nor of any limitation of the industrial field within which the principle can successfully be applied. It is at least possible that its introduction into domestic service would be productive of additional friction rather than harmony; and in the absence of any considerable body of experiments, a far more careful scrutiny of its theoretical possibilities is necessary before its advocacy can be convincing.

The book as a whole, however, will be found of much interest to the general reader as well as to the student of industrial conditions, and has already borne fruit in the stimulation of further collection of data on this subject.

MABEL HURD WILLETT.

DROWNVILLE, R.I.

Constructive and Preventive Philanthropy. By JOSEPH LEE. With an introduction by JACOB A. RIIS. New York, The Macmillan Company, 1902. — 242 pp.

Social Salvation. By WASHINGTON GLADDEN. Boston and New York, Houghton, Mifflin & Co., 1902. — 240 pp.

What Mr. Lee understands by philanthropy comprehends many things not commonly included under that term, from village improvement societies to national parks; but he disarms criticism on that score by explaining in the first chapter that all these things find their unity in a common object — the fostering of life. He seems to be more interested in public than in private undertakings to that end, and has made his book very largely an account of municipal activities of a sanitary or educational character. For the motive of philanthropy, he says,

> has shifted and is shifting, from a motive felt by one class to do good to another class, into a motive that can be entered into by all, which takes as its object, not the helping of one sort of people, but the building up of the better life of the community.

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Only the developments of the latter part of the nineteenth century are included in the account, except that one chapter is devoted to the history of the public library movement and the early conditions of factory life at Lowell. The manner in which the scope of the subject is defined is not scientific, but with the aid of the author's explanations it is usually comprehensible, if not justifiable.

Among the topics which one would naturally expect to be treated in a book with this title, there are chapters on Savings and Loan Schemes, Model Tenements, Children's Outings, and Boys' Clubs, and single pages on settlements and the social work of the churches. Three chapters are devoted to playgrounds, and part of another to outdoor gymnasiums. Vacation Schools and Industrial Training are the subjects of two educational chapters, and there is a chapter of disjointed paragraphs on matters which have no apparent connection except that they are supposed to be concerned with adults rather than children.

Mr. Lee has a fondness for figures and exact statement, and rarely indulges in philosophy or theory; but his presentation of facts, statistics, and dates is relieved by frequent flashes of humor. He has not aimed at encyclopædic completeness, but describes typical instances, especially from the experience of Boston, with which he is familiar from his connection with the Massachusetts Civic League. References are given at the head of each chapter. Mr. Riis contributes a characteristic introduction.

Under the title *Social Salvation*, Dr. Gladden has published a course of lectures delivered before the students of the Divinity School of Yale University. This volume is in a sense complementary to the author's *Tools and the Man*, which was made up of lectures delivered at the same place. In the second course of lectures he reviewed the problems of property and industry considered in the first, and discussed such subjects as the care of the poor, the unemployed, the reformation of criminals, social vices, public education, and municipal politics. The treatment is elementary, and of a nature intended to be of practical value to future ministers in their dealings with social problems. Dr. Gladden holds that Christianity cannot be adequately preached or lived without constant reference to social questions; on the other hand, he maintains that reformers lay too much stress upon changing the environment as a remedy for social vices, and too little stress upon the Gospel remedy — invigoration of character. A convenient little bibliography is given at the end of the volume.

MAX WEST.

RICHMOND HILL, NEW YORK CITY.

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Kontradictorische Verhandlungen über deutsche Kartelle. Die von der Deutschen Regierung angestellten Erhebungen über das inländische Kartellwesen in Protokollen und stenographischen Berichten. Hefte 1 u. 2. Berlin, Siemenroth, 1903. — 604 pp.

Abundantly supplied with industrial combinations as Germany is, its government has maintained a remarkably complacent, not to say benevolent, attitude in comparison with the governments of otherlands. Something similar might be said of the legal situation, for in no great industrial state is the law more favorable to the existence of such combinations than in Germany. Of course, there exists there a considerable element of hostility to the combinations, which is manifested in demands for their suppression. But the hasty and hitherto unsuccessfull legislative efforts of other countries in this direction have reconciled German lawmakers to a policy of inactivity; while the practical and theoretical economists generally regard the modern movement of combination as inevitable and on the whole beneficial. Nevertheless, in an empire with such powerful administrative organizations, a permanent abstention from some form of activity or intervention is not to be expected, and this is true whether the phenomena in question are regarded favorably or unfavorably. The immediate cause of the present inquiry into the German cartell system is to be found rather in the recent crisis and the resulting commercial depression than in a conviction that the time is ripe for a positive policy. As a matter of fact, the present industrial organization in Germany cannot be regarded as highly enough developed to be very lasting, and it is a general view, not only among economic students, but also among industrial leaders, that the current system of combination — the cartell — is only a transitory form which will give way in time to a closer organization, perhaps a complete consolidation, like some of the American trusts, so called. The governments in Germany, imperial and state, have a large practical interest in the question on account of their extensive participation in industry and transportation, and in some cases they have identified themselves with the syndicates.

The inquiry, the first volumes of the report of which are here under review, was instituted at a meeting on November 14, 1902, called by Graf von Posadowsky-Wehner, the Imperial Minister of the Interior, and attended by various members of the higher central administration and by representatives of industry and of economic science. Minister von Posadowsky explained that the imperial government took a neutral attitude on the question, and proposed to establish an

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inquiry in order to ascertain the facts, as a necessary preliminary to the undertaking of any positive measures. The purpose of this preliminary meeting was to get a consensus of opinion as to what the field of inquiry should be, and how the inquiry should be conducted. A scheme of questions concerning cartells was submitted to debate as well as questions of procedure, such as whether the proceedings should be published, whether confidential communications should be withheld from publication, and whether testimony should be made compulsory. The industrial representatives generally were opposed to a very searching inquiry, as injurious to their property interests. Professors Schmoller and Brentano were in favor of compulsory testimony and publication. A jurist, Dr. Spahn, submitted the proposition that the testimony should be published "unexpurgated," but without the names of the witnesses. The first groups of industries which it was proposed to examine were mining and iron, the central points of industrial interest and industrial difficulty; and, of the numerous cartells in these groups, it was proposed to take up coal first, and particularly the Rhenish-Westphalian Coal Syndicate and the Upper-Silesian Coal Convention. These two cartells and the coal situation in general form the subject of inquiry of the first two sessions, February 26, 27, and March 26, 27, 1903, and are reported in the two volumes which we have under review. The third session of the inquiry has already been held (May 12, 13); it was concerned with the Westphalian Coke Syndicate, but the report of the proceedings has not at this writing appeared in print. The investigation of the iron and steel industry has been postponed till next autumn, and the next industry to be considered will be paper (in June).

No inquiry of such extent or importance has been attempted before, I believe, in Germany, and the only one to be compared with it is the investigation of the stock exchanges[1] undertaken a few years ago. English and American methods are often cited with approval by German publicists, but the procedure in this case is quite different from that of a royal or congressional commission. In the first place, a report on the established facts is submitted by an official of the administration, and the subsequent proceedings take the form of an open discussion of this report. As a result of this debate, a scheme of questions is formulated which is intended to clear up controverted points and to bring out all the important facts. This debate is conducted in parliamentary form under the presidency of a government official. The meeting is private, and is attended only by persons invited to ap-

[1] *Cf.* POLITICAL SCIENCE QUARTERLY, XIII, 286.

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pear on account of their knowledge of the facts or their material interest in the subject. In respect to the testimony and publicity, the practice in this investigation is as follows: first, there is no legal compulsion to appear or to answer; second, anything that is confidentially communicated is withheld from publication; third, the injunction of silence is placed on those present, until the report is published. This last rule is not observed with absolute strictness, but it prevents any extended reports of the proceedings from appearing in the newspapers. I have had opportunities of speaking with some of the persons present at these meetings, and, judging from what I have heard, as well as from a reading of the report itself, my impressions respecting the fulness and freedom of the discussion are favorable. It has, indeed, been alleged that some persons hesitate to testify against the powerful syndicates (*cf.* p. 409), but this does not seem to be true generally. On the other hand, one is impressed often by an excessive civility to some of the more potent individuals of the government and the syndicates, which in respect to the latter has the appearance of aiming to flatter them into a more obliging humor. The presiding officer of the *enquête* sometimes seemed inclined to interfere rather peremptorily in the discussion; for example, to prevent unpleasant criticisms of the price policy of the Prussian fiscal coal mines (*cf.* p. 238), and again to exclude evidence concerning the profits of certain traders (p. 387), saying in the latter case that the inquiry was concerned with things not persons! — a rather extraordinary ruling. His rulings were not unconditionally respected, however, and did not materially affect the debate. The reporter on the coal cartells complained at the beginning of the second sitting that the Silesian Coal Convention had imposed a condition of secrecy on the material it had submitted to the government concerning its organization, *etc.*, and that he was, therefore, unable to say much respecting it. This attitude of the Silesian coal men was not favorably regarded by the assembly, and the leaders of the organization hastened to remove the obligation of secrecy and answered frankly all the questions asked them. At the opening of the second session, the presiding officer declared that in the publication of the proceedings of the first meeting nothing of consequence had been withheld, but in the second volume a considerable amount of material respecting the incomes of coal dealers was expunged from the record, with the approval of most of the persons present.

The stenographic report of the proceedings furnishes invaluable material for the study of the coal cartells and the coal industry. The report of the referent on the Westphalian Syndicate is the best thing

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on the subject since Sarter's contribution at the time of its establishment (Conrad's *Jahrbücher*, 1894), and is concerned with the actual organization and operation. The questions which formed the basis of discussion cover a wide range of topics, and are substantially as follows: (1) Name, location, and number of members in the cartell; (2) number of laborers, age and sex; (3) products covered by the cartell agreement; (4) annual amount and value of products; (5) reason for establishment of cartell, and term of the contract; (6) previous efforts at combination; (7) aim of the cartell; (8) organization of the cartell; (9) methods of sale, at home and abroad, and respective amounts; (10) prices of products at home and abroad, and grounds for fixing the same; (11) influence of cartells on dependent branches of industry and trade, and attitude toward purchasing associations; (12) influence exercised on the prices of raw materials employed; (13) influence on the concentration of industry — destruction of inefficient concerns and absorption of successive industrial branches; (14) influence on labor and wages; (15) influence on the quality of products. At the end of each volume is a large number of valuable appendices of a documentary and statistical character.

It is impossible to enter here into an intelligible discussion of the broad results of the inquiry, but a few suggestions may be made and some characteristic views noted. The heat of the battle raged about the price policy, and it is surprising, when we consider the recent agony of industrial circles in Germany over the coal famine and the enhancement of prices (see for example the debate in the Reichstag, in December, 1900), that the judgment upon the policy of the combinations should be so favorable. The general conclusion was practically this: The syndicates were very moderate in raising prices during the period of business prosperity, but should have let them down a little more and a little faster when the hard times began. Of course the coal dealers were fiercely attacked on account of extravagant exploitation of the public during the coal famine, and insistent demands were made by the representatives of the consumers' associations — industrial and agricultural — for direct supply; here the rather stiff position of the Westphalian syndicate seemed to be a little shaken. Interesting information is given in the proceedings for a comparison of the monopolized and the competitive markets, the latter appearing chiefly on the seacoast and in the central region around Berlin. The fiscal coal policy came in for a good deal of condemnation — which the presiding officer, as I have said, did his best to prevent — because it embodied a severer code of prices than that of the cartells themselves.

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One other topic may be mentioned, namely, labor relations. When the discussion reached this point the coal men both in Westphalia and in Silesia promptly pointed out that they had no direct relations with labor, and that, therefore, the discussion was irrelevant. Nevertheless, the matter was considered, and the coal representatives furnished a good deal of useful material concerning the situation. The conditions of labor and wages were both shown to have considerably improved.

There was no attempt to go into the question of reformatory measures, and an intervention of the state did not seem to be desired. The aim of the debate was simply to establish the facts and not to propose remedies, and in this respect it may be regarded as a very useful and relatively successful proceeding.

FRANCIS WALKER.

BERLIN, GERMANY.

Reciprocity. By J. LAURENCE LAUGHLIN and H. PARKER WILLIS. New York, The Baker and Taylor Company, 1903. — XI 583 pp.

The title of this book is somewhat misleading, since with the exception of the first two chapters, the work is devoted exclusively to the American aspects of the question. Although advocates of free trade, the authors take a strong stand against reciprocity, maintaining that, if we should ever approach the stage of development in tariff matters when reciprocity could be had, we should not need it. In spite of this gloomy forecast of the future of the reciprocity policy, the authors proceed to marshal numerous arguments against it, as though it were about to be carried through to a successful issue. Upon examination, serious flaws appear in these arguments. The reasoning runs somewhat like this: To be useful, reciprocity must benefit either the American consumer, the American producer, or both together. Does it benefit the consumer? In this connection Professor Taussig is quoted with approval:

> It may be laid down that any remission of duty which does not apply to the total importations, but leaves a considerable amount still coming in under duty, puts so much money into the pockets of the foreign producer.

The authors indorse this doctrine because it is in harmony with "the recognized economic principle that price is determined by the most

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expensive portion of the supply." The reasoning is not, however, entirely convincing. For will not reduction of the tariff rates stimulate importation from the favored country at the expense of the other producers, or increase the general supply and so reduce the price? As a matter of fact, is not that the reason why each country jealously watches the reciprocity treaties between other countries and insists on the "most favored nation clause"? The assertion that "reciprocity, when it can produce a fall in the price of imported commodities, . . . is not . . . different from tariff revision," ought to be an argument *for* reciprocity, to one who believes in the necessity of tariff revision, as the authors certainly do.

But while in its effect on imports reciprocity seems to favor the foreign producer only, the authors' conclusions are very different when they study its effects upon the American producer. The latter can never, they argue, obtain a differential advantage in a foreign market. The advantages he gets are also granted to other nations, through the operation of "the most favored nation clause," and therefore the result is simply to give our manufacturers "a somewhat wider market in which to compete with each other." This seems to be only a roundabout way of acknowledging that reciprocity increases the demand for our goods, which is after all more important to the industrial world than a differential advantage. The latter can only result in a profit to the *entrepreneur*. An enlarged demand diffuses itself through the industrial community.

Thus, in studying the effects of reciprocity upon the producer the authors arrive at conclusions quite the reverse of those reached in studying its effects upon the consumer. In the latter case the foreign producer gets all the benefit, whereas in the former the American producer does not seem to derive any benefits at all. This naturally arouses suspicion that there is a strong bias against reciprocity. Of course the authors might say that there is a difference between American reciprocity treaties and the treaties between European nations. In Europe the "most favored nation clause" usually operates, and the effects of a treaty are spread over the whole foreign supply, while the United States does not adhere to this clause, and consequently a treaty here means a differential advantage. There would be some force in such an argument, as a ground for contending that the absence of the "most favored nation clause" injures the American consumer. Yet on page 15 we read that by not accepting this clause the United States occupies a "vantage-ground," which is greatly objected to in Europe.

That reciprocity should appear insufficient to a convinced free-

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trader is natural enough. Yet he ought to know that at least in Europe reciprocity treaties have had the support of free-traders, and have accomplished much in the way of moderating the extremes of protection. American experience with such treaties is entirely too limited to supply much material for independent conclusions. In fact, it is so limited that the success of the authors in compiling such a large volume on this topic is really surprising. It is partly explained by the inclusion of a considerable amount of irrevelant matter, as, for instance, the study of the world's sugar industry. Nevertheless, the book may safely be recommended as a reference book on an important question of the day.

There is just one more point to which it is necessary to call attention, and that is the authors' very inadequate use of quotation marks. The whole of Chapter V (Reciprocity and the Sugar Situation) is practically copied, with verbal changes, from the monograph on Sugar Production and Consumption, published in the *Monthly Summary of the Bureau of Statistics* (Treasury Department) for January and November, 1902. This monograph is quoted four times in the chapter,[1] but quotation marks are employed to limit the indebtedness. There is nothing to indicate that many preceding and succeeding pages are from the very same source. It would be easy to illustrate by parallel quotations how closely the sources have been followed. The reader may be referred to the following passages: Willis and Laughlin, pp. 163–165 and *Monthly Summary*, pp. 1295–96; 144–150 of our authors and 1283–89 of the *Summary;* and pp. 157–8 and 1275–82. Nor does it appear on comparison that the official monograph has been improved upon; it has been expanded, and a few inaccuracies have been introduced. On pages 160–2 there is a very interesting quotation from Professor Jenks' Report to the Industrial Commission on the Austrian sugar industry, but by a peculiar coincidence the identical quotation is found on pages 1292–3 of the official monograph. There is, however, one noticeable difference. The official monograph mentions all the authorities on whose works each section is based, while the volume of Professors Laughlin and Willis does not, except in so far as the very long bibliography may possibly be designed to answer this purpose.

I. M. RUBINOW.

[1] It is noteworthy that on pages 156–7 the same page of the same book is quoted, once as "World's Sugar Production and Consumption," and once as "Monthly Summary of Commerce and Finance."

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BOOK NOTES.

The New York State Library is to be congratulated upon the increasingly valuable work which is being accomplished in the comparative study of commonwealth legislation through the efforts of Dr. Robert H. Whitten. In addition to the Summary and Index of Legislation which has been issued for some years, the library has recently begun two other compilations, — the Digest of Governors' Messages, and the Review of Legislation. The Review of Legislation for 1902, which appeared a few months ago, is a substantial volume of over 200 pages, containing most instructive articles on every phase of constitutional and administrative law. Among the more noteworthy reviews may be mentioned those on State Government by C. E. Merriam, Elections by F. J. Stimson, Taxation by F. A. Fetter, Irrigation by Ellwood Mead, Transportation by B. H. Meyer, Labor by A. F. Weber, Local Government by D. F. Wilcox, and Municipal Functions by J. A. Fairlie. The value of such accurate and comprehensive surveys to all students of economics and political science can scarcely be exaggerated.

It is a praiseworthy custom of the French international expositions to publish the reports of the official juries. The general introduction to the sixth part of the Report of the Jury on Social Economics at the Paris Exposition of 1900 was written by Prof. Charles Gide, and has been printed by the Ministry of Customs and Industry under the name of *Rapports du Jury International, Introduction Générale, sixième partie, Economie Sociale*, 1902, in a stately quarto volume of 337 pages. Comparison is at once invited with the similar report of the exposition of 1890, which was written by Léon Say. There is no more eloquent testimony to the remarkable change of opinion on questions of social economics that has come over France in the last decade. Léon Say was almost the last of the old classical liberal school, which, however, still largely dominated public and official opinion; M. Gide is the leader of the new school, which now counts in its ranks well nigh all of the younger economists of France, and with whose opinions on questions of social reform the present government is in almost complete harmony. The significance of the report, therefore, lies not so much in the interesting details which it contains on all the questions of practical social economics, as in the point of view from which they are discussed. M. Gide divides his work into the heads

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of wages, comfort, security, and independence, and each division contains a well-reasoned survey of, and comment upon, the exhibits and exhibitors.

The many admirers of Mr. Lubbock's scientific publications will be glad to greet *A Short History of Coins and Currency* which has just been published under his new name of Lord Avesbury (New York, E. P. Dutton). The first part of this little volume is founded upon an introductory address delivered several years ago by the author, when president of the Institute of Bankers. It deals with the origin of money and the coinage of Britain, and it contains a well-selected list of admirable illustrations. The second part, which is new, treats of the weights of coins and contains a few remarks on bank notes and banking.

The readers of Wallas's *Life of Place* and of Foxwell's introduction to Menger's *The Right to the Whole Produce to Labor* have had their attention called to Thomas Hodgskin, the forerunner of Karl Marx. A special study of Hodgskin has now been made by a young Frenchman, by the name of Halévy, and has been published in a volume of 219 pages by the Société Nouvelle de Librairie et d'Edition (Paris, 1903). M. Halévy has made use of the material in the British Museum as well as of many unpublished letters and details furnished by Hodgskin's daughter. The result is an interesting and well-balanced account of Hodgskin, who, as we now see, ought really not to be classed as a socialist at all, but simply as a radical critic of Ricardo and as a quasi-anarchist. It is not to the credit of the English economists that the first adequate knowledge that we are getting of the least well-known writers of the nineteenth century should come from France.

The first volume of what promises to be a comprehensive work on William Pitt has appeared from the pen of Felix Solomon, and is published by Teubner in Leipzig. After an introduction dealing with the youth of Pitt, a chapter is devoted to the political teachings of Chatham in relation to the political development of England. This is followed by a chapter occupying about one-half of the entire volume, devoted to the economic doctrines of Adam Smith in connection with the economic and social development of England. This chapter will be of especial interest to economists, because it supplements in many respects the work of Toynbee and gives an admirable account of the relations of Adam Smith to the mercantilists and of the deeper forces which were preparing a victory for Smith's ideas.

The interest lately displayed by the French economists in the history of economic thought during the eighteenth century continues

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unabated. We are in fact having an *embarras des richesses*. Thus two volumes have recently appeared at almost the same time devoted to the work of the elder Mirabeau. The one by Henri Ripert, a lawyer, is entitled *Le Marquis de Mirabeau (L'Ami des Hommes), ses Théories Politiques et Economiques* (Rousseau, Paris, 457 pp.). The other, by Lucien Brocard, professor at Aix-Marseilles, is entitled *Les Doctrines Economiques et Sociales du Marquis de Mirabeau dans L'Ami des Hommes* (Giard et Brière, Paris, 394 pp.). The two books supplement each other. Ripert's larger volume treats mainly of Mirabeau's public work, and contains an excellent bibliography. It deals not only with the *L'Ami des Hommes* but with his other works, and also discusses his influence in the provincial assemblies. Brocard's book, which is confined to a study of his principal work, is based in part upon unpublished material, and gives a somewhat more satisfactory comparison of Mirabeau with the writers that preceded and succeeded him. Incidentally, the author warmly denies the charge that has been current for so long,— that Mirabeau plagiarized from Cantillon. Each work is a valuable contribution to the history of physiocracy.

A much-felt want in the literature of industry has now been supplied by the comprehensive work entitled *Dangerous Trades*, and edited by Thomas Oliver. (New York, E. P. Dutton, 1902; 891 pp.) Mr. Oliver is a medical expert on the White Lead, Dangerous Trades, Pottery, and Lucifer Match Committees of the Home Office, England, as well as professor of physiology at Durham. He has collected a large number of papers, by a variety of experts, on the historical, social, and legal aspects of industrial occupations as affecting the health. Mr. Oliver himself supplies the introduction, a paper on the general physiology and pathology of work and fatigue, and chapters on dust, on lead and phosphorus, on India rubber, on benzine, on flour mills, on iron and steel industries, and on miscellaneous trades. There are altogether sixty chapters, including practically all the dangerous trades of modern times. The book will be an indispensable manual to all those concerned with the social aspects of modern industry. Mr. Oliver thinks that the institution in England of a consultative body, or an industrial council composed of the Home Secretary and his assistants, employers, a few educated workmen, chemists, medical men, and electricians, would be of the utmost value in preparing and discussing legislation. Sooner or later something of the kind will have to be established in the United States also. In the mean time, the work of Mr. Oliver will remain a model of its kind.

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Students of economic history owe a debt of gratitude to Dr. S. Morley Wickett, who has made available for English readers Karl Bücher's brilliant work, *Die Entstehung der Volkswirthschaft.* (See POLITICAL SCIENCE QUARTERLY, Vols. IX, p. 329, and XIII, p. 195, for reviews of the first and second editions of the original). The translation, entitled *Industrial Evolution* (New York, Henry Holt & Co., XI, 393 pp.), is made from the third revised German edition. Mr. Wickett has succeeded in a large measure in preserving the charm of style of the original. He has wisely employed annotations sparingly, giving only such as will be of real service to an understanding of the text.

M. Léon de Seilhac, whose name is familiar to those who are interested in the social problems of contemporary France, has contributed to the literature of strikes an interesting little volume, *Les Grèves* (Paris, Librairie Victor Lecoffre, 1903; 256 pp.). American and English students of the labor problem, having long since learned that industrial peace will in the future depend largely upon the development of responsibility and efficiency on the part of the trade unions, will naturally expect to find little light on the subject in a study of conditions in France, where, to use the author's words, "there are no unions, but only the skeletons of unions." But M. de Seilhac's sketch of the history of strikes in France and of the change in the attitude of French law toward strikers, will be found to be of some importance. The part which socialism plays in fomenting strikes is described, and a graphic account of a number of typical strikes serves to give point to the author's argument. M. de Seilhac agrees in the main with most modern writers, that the creation of responsible unions and the facilitating of conciliation and arbitration will do much to lessen the friction between labor and capital.

Prof. James Bale Morman, in his *Principles of Social Progress* (E. Darrow & Co., Rochester), has made "a study of civilization," going back to biology and ancient history for a starting-point, and reaching the conclusion that things are not as they should be. He looks to political action for improvement, but has no faith in present-day legislators or office-holders; hence he falls back upon constitutional amendment. His only definite proposals, indeed, are a series of constitutional amendments regulating the conditions and compensation of public office, with a view to preserving democratic government and preventing the development of a bureaucracy. After the many stupendous social problems stated in the earlier chapters, these proposals have the effect of an anti-climax.

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Mr. George Reed of San Francisco is author and publisher of an unprofitable discussion of the money question, entitled *Valics, or the Science of Value.* The theory of value and prices is set forth with the aid of many diagrams, but only for the purpose of attacking the gold standard, which is called a "mental monstrosity" and a "thieving scoundrelism." For the express purpose of lightening the debts of the world, a money of pure silver is proposed. A considerable amount of information is given about the world's coinage systems, past and present, but there is no apparent connection between this exhibit of facts and the argument.

One of the more recent of the Atlanta University publications, edited by Prof. W. E. Burghardt DuBois, is devoted to *The College-bred Negro* and his success in life. Out of about 2,500 negroes who have received college degrees in the United States, returns were received from about 1,300, more than half of whom were teachers, and most of whom seem to have achieved a reasonable degree of success in their chosen occupations. The conclusion is that there is need for college education as well as industrial training for negroes, but that the requisite higher education could well be supplied by a much smaller number of institutions than now offer college work, leaving the smaller institutions to develop as normal and industrial schools.

Professor Ely's *Evolution of Industrial Society* (New York, The Macmillan Company, 1903. — xviii, 497 pp.) is a collection of essays of more or less permanent value, arranged with a view to giving a unitary presentation of the more significant facts of economic evolution. Part I, chiefly a restatement of well-known facts of economic history, contains little that is new, but may be of value to those who do not have access to the literature on the subject. Part II deals with special economic problems — monopoly, municipal ownership, inheritance, reform, *etc.*, — and will prove of interest to the economic specialist, as Professor Ely is nowhere more at home than in the treatment of problems of this nature.

Few writers have contributed so much to our knowledge of Russian institutions, ancient and modern, as Prof. Maxime Kovalevsky, and no one else could have written so satisfactory a little book on the growth and development of the Russian political system from the beginnings of Russian history to the present time, as Professor Kovalevsky has done in his *Russian Political Institutions* (The University of Chicago Press, 1902). The opening chapter, twenty-six pages in length, on "The Making of Russia," may be commended to all students of sociology as an admirable example of due and balanced attention to

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the various factors of environment, race, language, temperament, ideas, and customs entering into the social evolution of a people. Following this introduction are chapters on old Muscovite institutions, the reforms of Peter the Great, of Catherine II, of Alexander II, on the past and present position of Poland in the Russian Empire, and on the past and present position of Finland in the Russian Empire. All of these chapters are compact with information and sound judgment.

Studies of ethics have taken on so distinctive a hue since theories of evolution became generally accepted that a ponderous volume on the philosophy of conduct, fresh from the press, but of such qualities that it might have been written at any time between the days of the judicious Hooker and those of the God-intoxicated Jonathan Edwards, makes a strange impression upon the reader. Prof. George Trumbull Ladd's *Philosophy of Conduct* (New York, Charles Scribner's Sons, 1902), abounds in highly commendable reflections upon human conduct in general and in particular. We are satisfied that any young man who should diligently follow the recommendations of this book would never stray from the paths of virtue. We are equally certain that he would never be troubled with a new idea.

Mr. A. H. Inman has made a valuable contribution to the statistical material of English history in *Domesday and Feudal Statistics* (London, Elliot Stock, 1900). An analysis of Domesday set forth in six elaborate tables based on computations made by Sir H. Ellis, Frederick Maitland and C. Pearson is the essential feature of the book. These tables are followed by minutely explanatory chapters, an interesting note on the agricultural data in Tacitus' Germania, and a chapter on agricultural statistics. The book is of great importance to scholars who are interested in the details of English economic history.

President Jordan, in his *Blood of the Nation* (Boston, The American Unitarian Association, 1902, 82 pp.), argues that it is not social nor economic forces that determine what the future of a race is to be, but the laws of selection, which are the same for "a race of men or a herd of cattle." It is the "man who is left" who impresses his character upon future generations. If the strong and the brave are sacrificed in war, it is inevitable that the future race will be weak and cowardly. To be brave warriors, we must avoid war, whatever the cost. President Jordan scouts the idea that a race may degenerate through peace and its attendant luxury. Preserve the strong and eliminate the weak, and a noble and virtuous race is assured, whatever social influences, good or bad, may be at work. The moral, indicated but not ex-

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pressed, is that the United States should return to its traditional policy of isolation, lest through the cost of men entailed by war and colonial administration it sink to the imbecility of decadent Rome.

The Heart of the Empire (T. Fisher Unwin, 1902) contains seven essays on aspects of modern life, especially in English cities, a review of imperialist tendencies in England and her dependencies, and a concluding chapter on the effort which society must make to save itself from the evil tendencies which threaten it under the capitalistic régime. Most of the essays are written by university men who have been connected with settlement work, and are very general and popular in character. The book is a useful protest — though in parts overdone — against the tendencies toward social inequality which are now operative.

The Theory and Practice of the English Government, by T. F. Moran (Longmans, 1903), is a well-considered and accurate text-book of English constitutional law and practice. In its compilation the best standard authorities have been used. The book is well arranged and agreeably written. A useful bibliography, including references to many magazine articles of importance, is appended.

The West Indies and the Empire, by H. de R. Walker (London, T. Fisher Unwin; New York, Dutton, 1902; 253 pp.), is a valuable study of the present industrial and social condition of the British West Indian colonies. The author has studied conditions on the ground. He discusses the sugar question, efforts which are making to develop other resources of the islands, the negro and the East Indian coolie, and taxation and administration. The distinct purpose of the book is to arouse greater interest on the part of the British government in the island colonies, and to secure reform.

Prof. Edward Arber's well-known series of reprints of old English pamphlets, entitled *An English Garner*, is now being reissued in twelve volumes. The contents have been rearranged and classified and some new material has been added. Each volume has been placed under special editorial supervision. The series bears the American imprint of E. P. Dutton & Co. The volume before us is entitled *Social England Illustrated* (458 pp.), and is edited by Andrew Lang. It contains eighteen tracts, dating from the sixteenth and seventeenth centuries, and relating to a variety of subjects. The most important ones relate to the navy, the army, and the fisheries. The editor, in an introduction, discusses both the tracts and their authors in his usual interesting manner.

The July number of the *Iowa Journal of History and Politics* (Vol.

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I, No. 3), maintains the grade of excellence which has characterized the preceding issues. Among its articles appear discussions of the Wisconsin gerrymanders of 1891 and 1892, and the congressional districting of Iowa. In both literary quality and typography this publication is a credit to its editors and to the State Historical Society.

The Library of Congress has just issued, in a volume of 316 pp., *A Calendar of the John Paul Jones Manuscripts*. This has been compiled by Dr. Charles H. Lincoln, of the Division of Manuscripts, and contains outlines of such of the Jones papers as are in the possession of the Congressional Library.

Some ten years ago Mr. George Browning Lockwood took up at De Pauw University the study of New Harmony. Since then he has been continuing his investigations, which have now resulted in the publication of a fine volume entitled *The New Harmony Communities* (The Chronicle Company, Marion, Ind.). It contains the fullest account that we have of the early history of the experiences of the Rappites and the fortunes of New Harmony and Robert Owen. Interesting side lights are thrown on some of the other leaders in the movement, like Robert Dale Owen, MacLure, Frances Wright, and Josiah Warren. The separate chapter devoted to the last-named reformer is the production of Mr. William Bailie, who intends soon to publish a separate monograph on Warren. Altogether, Mr. Lockwood is to be congratulated upon a most engaging and valuable history of an interesting episode in the annals of communism.

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